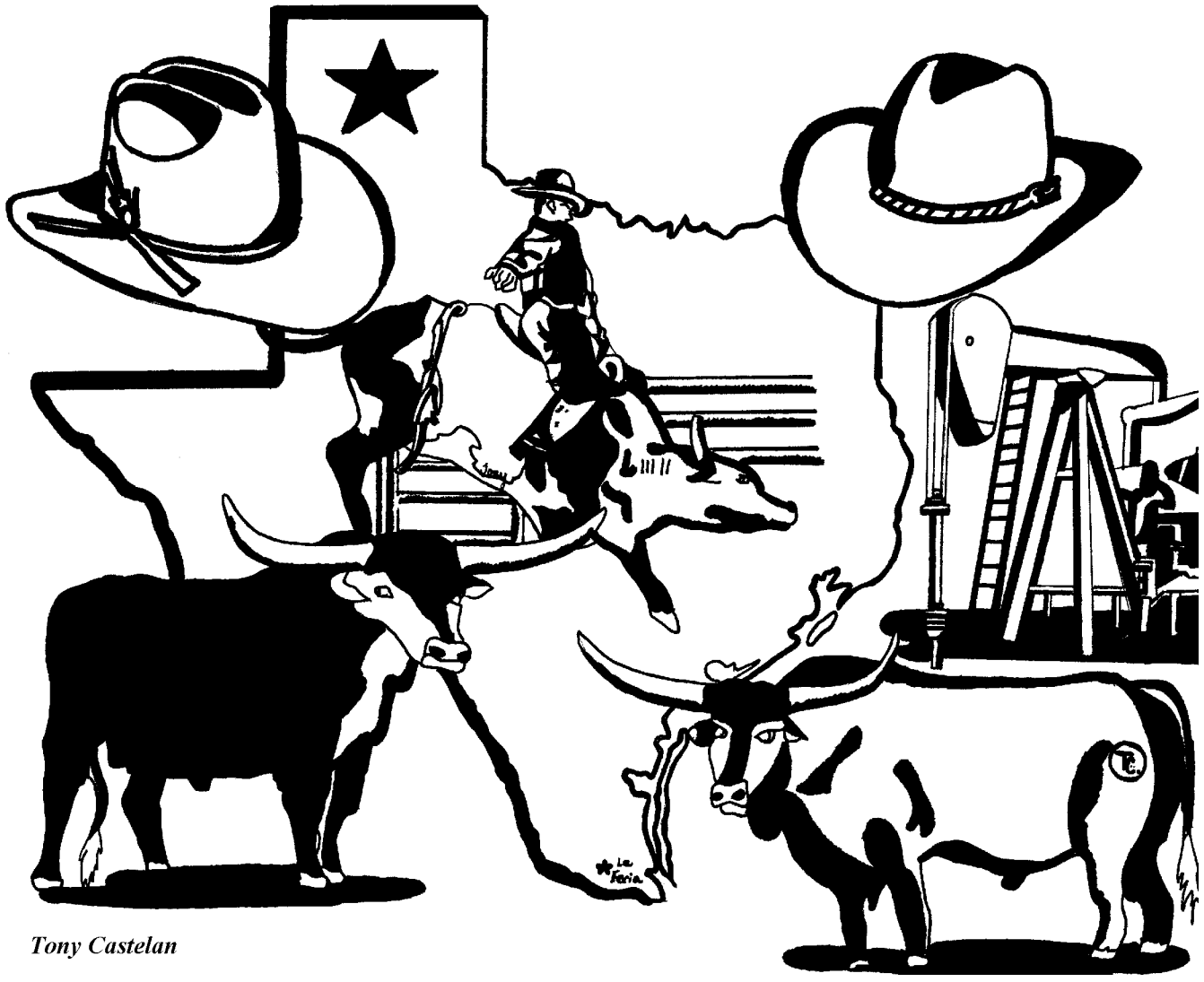
TEXAS REGISTER

Volume 30 Number 14 *April 8, 2005* *Pages 2007-2150*



Tony Castelan

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781),** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $240. First Class mail subscriptions are available at a cost of $300 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas and additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

IN THIS ISSUE

RULE REVIEW

Proposed Rule Reviews

TABLES AND GRAPHICS

IN ADDITION

Office of the Attorney General

Texas Building and Procurement Commission

Coastal Coordination Council

Office of Consumer Credit Commissioner

Texas Commission on Environmental Quality

Department of State Health Services

Texas Department of Housing and Community Affairs

Texas Department of Insurance

Legislative Budget Board

Texas Lottery Commission

Texas Parks and Wildlife Department

Public Utility Commission of Texas

Texas A&M University, Board of Regents

Texas Workers' Compensation Commission

Work-Force 1 (Coastal Bend Workforce Development Board)

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

•••

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointment for March 17, 2005

Appointed to the South East Texas Regional Review Committee for a term to expire January 1, 2006, William E. "Eddie" Arnold of Beaumont.

Appointments for March 23, 2005

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2007, Steven M. McReynolds of Port Neches (replacing Lila Pond of Port Neches who resigned).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2009, Jimmie Ruth Cooley of Woodville (replacing Lois Henderson of Warren whose term expired).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2009, Kathleen Thea Jackson of Beaumont (replacing William Neild of Beaumont whose term expired).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2009, Sue Cleveland of Kountze (replacing John Robinson of Silsbee whose term expired).

Appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2011, Virginia Chandler Dykes of Dallas (replacing Linda Hughes of Dallas whose term expired).

Appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2011, Sharon Venable of Dallas (replacing Delia Reyes of Dallas whose term expired).

Appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2011, Lou Halsell Rodenberger of Baird (replacing Jerry L. Brownlee of Hica whose term expired).

Appointed to the Texas Board of Professional Geoscientists for a term to expire February 1, 2011, Kimberly Robinson Phillips of Houston (Ms. Phillips is being reappointed).

Appointed to the Texas Board of Professional Geoscientists for a term to expire February 1, 2011, Yale Lynn Clark of Dallas (replacing Kevin Coleman whose term expired).

Appointed to the Texas Board of Professional Geoscientists for a term to expire February 1, 2011, Glenn R. Lowenstein of Houston (replacing Edward Miller whose term expired).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2011, James S. Walker, II of Houston (replacing Nolen Willis of Bellaire whose term expired).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2011, Rosemary A. Gammon of Plano (replacing Anthony Trevino, Jr. of Laredo whose term expired).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2011, Peggy Lewene Vassberg of Lyford (replacing Alan Lauck of Dallas whose term expired).

Appointments for March 24, 2005

Appointed to the Texas Skill Standards Board for a term at the pleasure of the Governor, Carlos R. Chacón of El Paso (replacing Roy Olivo who resigned).

Appointed to the Texas Skill Standards Board for a term at the pleasure of the Governor, Whitney B. Wolf of San Antonio (replacing Jeanne Hatfield who resigned).

Appointed to the North East Texas Regional Mobility Authority, pursuant to Transportation Code, Section 370.251, for a term to expire February 1, 2011, Jeff Austin, III of Tyler.

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2005, Sharla Hotchkiss of Midland (replacing Frank Acost)

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2007, James E. Brown, Jr. of Burleson (replacing Lonnie Morgan who resigned).

Appointed to the Emergency Medical Services Advisory Council for a term to expire January 1, 2010, Linden Michael Click of Brownfield (replacing John Simms who resigned).

Appointed to the Emergency Medical Services Advisory Council for a term to expire January 1, 2010, Hector G. Longoria of Houston (replacing David Jimenez who resigned).

Appointments for March 25, 2005

Appointed to the Executive Council of Physical Therapy and Occupational Therapy Examiners for a term to expire February 1, 2007, L. Suzan Kedron of Dallas. Ms. Kedron is being reappointed.

Appointed to the Lease Board for the Texas Department of Criminal Justice for a term to expire February 1, 2007, Spencer Hayes of Austin. Mr. Hayes is being reappointed.

Appointed to the Jefferson and Orange County Pilots Board for a term to expire August 22, 2006, Kevin Williams of Orange.

Appointed to the Jefferson and Orange County Pilots Board for a term to expire August 22, 2006, Morris Carter, Jr. of Port Arthur.

Appointed to the State Independent Living Council for a term to expire at the pleasure of the Governor, Glenda Embree of Austin (replacing Charles Burtis).

Appointed to the State Independent Living Council for a term to expire at the pleasure of the Governor, Martha Bagley of Austin (replacing Terry Sheldon).

Appointed to the State Independent Living Council for a term to expire October 24, 2005, Marcia Ingram of Midland (reappointment).

Appointed to the State Independent Living Council for a term to expire October 24, 2005, Paula Jean Margeson of Plano (reappointment).

Appointed to the State Independent Living Council for a term to expire October 24, 2005, Jesse Seawell of Fort Worth (reappointment).

Appointed to the State Independent Living Council for a term to expire October 24, 2006, Dennis Borel of Austin (reappointment).

Appointed to the State Independent Living Council for a term to expire October 24, 2007, Michelle Crain of Lubbock (replacing Luis Chew of El Paso whose term expired).

Rick Perry, Governor

TRD-200501356

♦ ♦ ♦

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0325-GA

Requestor:

The Honorable James Tirey

Hale County Attorney

500 Broadway, Suite 80

Plainview, Texas 79072

Re: Whether the Hale County Hospital Authority may enter into an income guarantee agreement to induce physicians to practice in its facility (Request No. 0325-GA)

Briefs requested by April 23, 2005

RQ-0326-GA

Requestor:

The Honorable Robert Puente

Chairman, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Applicability of the Open Meetings Act, chapter 551, Government Code, to a meeting between two members of a governmental body and two newly-elected but not yet sworn-in members (Request No. 0326-GA)

Briefs requested by April 24, 2005

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200501355
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 30, 2005

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-461. The Texas Ethics Commission has been asked to consider whether a legislator who is a lawyer may be employed by a law firm that represents clients before a state agency. (AOR-522)

SUMMARY

There is nothing in the laws subject to interpretation by the Ethics Commission that prohibits a legislator from being employed by a firm simply because other members of the firm represent clients before state agencies.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes:

(1) Chapter 572, Government Code;

(2) Chapter 302, Government Code;

(3) Chapter 303, Government Code;

(4) Chapter 305, Government Code;

(5) Chapter 2004, Government Code;

(6) Title 15, Election Code;

(7) Chapter 36, Penal Code; and

(8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200501341
Sarah Woelk
General Counsel
Texas Ethics Commission
Filed: March 29, 2005

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.93

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.93 concerning Responses.

The amendment to §501.93 will delete subsection (e) regarding the location where a party to a contested case may be deposed and adds a new subsection (e) that contains an interpretive comment.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of §501.93, by removal of a subsection that is not relevant.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on April 27, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment is not applicable to small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.93. Responses.

(a) An applicant, certificate or registration holder shall substantively respond in writing to any communication from the board requesting a response, within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the communication was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number, or e-mail address furnished to the board by the applicant, certificate or registration holder.

(b) An applicant, certificate or registration holder shall provide copies of documentation and/or working papers in response to the board's request at no expense to the board within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the request was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number or e-mail address furnished to the board by the applicant, certificate or registration holder. An applicant, certificate or registration holder may comply with this subsection by providing the board with original records for the board to duplicate. In such a circumstance, upon request the board will provide an affidavit from the custodian of records documenting custody and control of the records.

(c) Failure to timely respond substantively to written board communications, or failure to furnish requested documentation and/or working papers, constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(d) Each applicant, certificate holder and each person required to be registered with the board under the Act shall notify the board, in writing, of any and all changes in either such person's mailing address or telephone number and the effective date thereof within 30 days before or after such effective date.

(e) Interpretive Comment. This section should be read in conjunction with §519.6 of this title (relating to Subpoenas).

~~[(e) An applicant, certificate or registration holder who is a party to a contested case in a disciplinary action brought by the board may be deposed at the board's offices in Austin, Texas. If the deponent is not a party to a contested case, the board will reimburse the deponent for reasonable expenses incurred to attend the deposition in accordance with §2001.103 of the Texas Government Code. Any deponent may seek a protective order concerning the place of deposition on grounds stated in Texas Rule of Civil Procedure 192.6.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501297
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 305-7848

♦ ♦ ♦

CHAPTER 505. THE BOARD

22 TAC §505.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.1 concerning Board Seal and Headquarters.

The amendment to §505.1 will describe and illustrate the official seal of the Texas State Board of Public Accountancy.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of what elements compose the State Board of Public Accountancy's seal.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on April 27, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because this amendment does not affect small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.1. Board Seal and Headquarters [~~of the Board~~].

(a) The official seal of the Texas State Board of Public Accountancy illustrated below shall consist of:

(1) a circle with a rope border;

(2) a five point star comprised of five diamond shapes is in the center, with the star placed so that one point is pointed directly at the top, with the remaining points spaced equidistant;

(3) the word "TEXAS" is spelled out placing one capital letter between each point of the star beginning on the left side of the star;

(4) the center star is itself bordered by a circle of dots;

(5) the words "TEXAS STATE" in capital letters appear at the top of the seal in the margin between the dot border and the rope border;

(6) the words "BOARD OF PUBLIC ACCOUNTANCY" in capital letters appear at the bottom of the seal in the margin between the dot border and the rope border;

(7) the background of the seal shall be black; and

(8) all features described is subsections (1) through (6) of this section shall be in gold.
Figure: 22 TAC §505.1(a)(8)

(b) The board seal may be embossed on a solid gold background to place official board records and documents under seal. The board may cause the board seal to be reproduced in other color schemes for use in official board business or board authorized functions or publications. The board seal may not be reproduced or used for non-board business without the express written consent of the board's Executive Director.

(c) The headquarters and administrative offices of the board shall be at 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501298
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 305-7848

♦ ♦ ♦

CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.6 concerning Subpoenas.

The amendment to §519.6 will add subsection (c), which specifies that an applicant, certificate, or registration holder, subject to an investigation or that is a party to a contested case, may be deposed by the Board. Subsection (c) further specifies the location at which such deposition may take place and, in the case of a deponent that is not a party, the reimbursement policy of the Board. Subsection (d) adds an interpretive comment stating that this rule should be read in conjunction with §501.93 of this title relating to Responses.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of the location at which a person, subject to an investigation or party to a contested case may be deposed; furthermore, that an applicant, certificate or registration holder who is the subject of an investigation, in addition to one who is party to a contested case, may be brought by this Board to be deposed.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on April 27, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.6. Subpoenas.

(a) The executive director or his designated representative is delegated authority to issue subpoenas to compel the attendance of relevant witnesses or to compel the production of relevant documents, records and other materials, maintained by electronic or other means in the furtherance of the investigation of any matter within the jurisdiction of the board. The executive director or his designated representative may administer oaths and take testimony and other evidence from any person who is the subject of a subpoena issued under this section in the furtherance of the investigation of any matter within the jurisdiction of the board.

(b) The executive director or his designated representative is delegated authority to issue subpoenas authorized by the APA in contested cases and the Act.

(c) An applicant, certificate or registration holder who is the subject of an investigation or a party to a contested case in a disciplinary action brought by the board may be deposed at the board's offices in Austin, Texas. If the deponent is not a party to a contested case, the board will reimburse the deponent for reasonable expenses incurred to attend the deposition in accordance with §2001.103 of the Texas Government Code. Any deponent may seek a protective order concerning the place of deposition on grounds stated in Texas Rule of Civil Procedure 192.6.

(d) Interpretive Comment. This section should be read in conjunction with §501.93 of this title (relating to Responses).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501299

Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 305-7848

♦ ♦ ♦

SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.41

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.41 concerning Pleadings in Contested Cases.

The amendment to §519.41 will clarify the language required to be included in the complaint filed by the Board with SOAH; the amended language indicates that a respondent must file an answer with the Board as well as SOAH.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be improved understanding by the public of where to file a response to any complaint.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on April 27, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because there is no increase in difficulty of responding to a complaint.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.41. Pleadings in Contested Cases.

(a) A complaint filed by the board with SOAH shall include information that alleges a certificate or registration holder has committed a violation of the Act. The complaint shall be assigned a docket number and an ALJ and shall be filed before or contemporaneously with the notice of hearing. The complaint shall include:

(1) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(2) a reference to the particular sections of the statutes and rules involved;

(3) a short, plain statement of the matters asserted; and

(4) the following language in at least 12-point bold type: "If you do not file a written answer to this complaint with the board[~~State Office of Administrative Hearings~~] within 20 days of the date the complaint was mailed, the board may request the matter be remanded to the board for final disposition and all of the matters alleged in the complaint will be deemed admitted as true. A copy of any response you file with the board shall also be filed with the State Office of Administrative Hearings[~~shall also be provided to the staff attorney for the Texas State Board of Public Accountancy whose name appears on the complaint~~]."

(b) The Notice of Hearing shall include:

(1) a statement of the time and place of the hearing;

(2) a statement of the nature of each charge against the Respondent; and

(3) the following language in at least 12 point bold type: "If you fail to attend the hearing, the factual allegations contained in the complaint and any amendments to the complaint will be deemed as true, and the relief sought in the complaint and any amendments to the complaint may be granted by default and a default judgment entered against you, which may include any or all of the requested sanctions, including the revocation of your certificate or registration".

(c) The Respondent shall file a written answer with the board[~~SOAH~~] within 20 days of the date the complaint or amended complaint was sent to Respondent as computed under §519.3 of this title (relating to Computation of Time). The answer shall include a short, plain statement of the Respondent's defenses to each claim asserted and shall admit or deny each allegation contained in the complaint. If the Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the Respondent shall so state and this has the effect of a denial. When a Respondent intends in good faith to deny only a part or a qualification of an allegation, the Respondent shall specify so much of it as is true and material and shall deny only the remainder.

(d) Factual and legal allegations by the board in a complaint or amended complaint are admitted when not denied in the Respondent's answer or amended answer.

(e) All amended pleadings shall be filed no later than 20 days prior to the hearing date. Any amended pleading filed after that date

shall be null and void, and have no effect unless otherwise ordered by the ALJ, upon a showing of good cause and lack of harm to the opposing party.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501300
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 305-7848

♦ ♦ ♦

PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 597. UNLAWFUL ACTS AND GROUNDS FOR REVOCATION

22 TAC §597.1

The Texas Structural Pest Control Board proposes an amendment to §597.1, concerning Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses. The proposal reflects the codification of the Structural Pest Control Act into the Texas Occupations Code. The proposal also clarifies the penalty for failure to notify the Board when apprentices leave a business or when an apprentice does work for which the apprentice is not trained. The proposal also clarifies the violation on when a licensee operates without insurance. Finally, a new regulation is added by listing a violation for a licensee not providing a disclosure document with a written estimate prior to or at the same time as the written estimate.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the amended section. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the amendment will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the amendment will be in effect.

There will be no cost of compliance for small businesses since the proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the proposal.

There is no cost of compliance for individuals since the proposal will only affect violators of the rule.

Mr. Burnett also has determined that for each of the first five years the amendment as proposed is in effect, the public benefits anticipated as a result of enforcing the amendment as proposed will be that licensees will be aware of the consequences if apprentices operate outside of a category or a business license holder does not notify the Board if an apprentice leaves a business. Operating without insurance is more clearly defined. Finally, the new regulation on disclosure documents makes it clear that those documents must be provided prior to or at the same time as the written estimate. There will also be a public benefit by listing the statutory codification of the Structural Pest Control Act.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§597.1. Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses.

Any such action may be accomplished by a vote of the Board, after notice and hearings, as provided for by Texas Civil Statutes[~~, Article 135b-6,~~] and the Administrative Procedure and Texas Register Act. No revocation [~~evocation~~], suspension, annulment, or withdrawal of any license is effective unless prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given the opportunity to show compliance with all requirements of law for the retention of the license. The following are grounds for revocation, suspension, penalties, reprimanding, refusal to examine, refusal to issue or renew licenses:

(1) - (9) (No change.)

(10) performing work in a category for which the certified applicator or technician licensee is not licensed or an apprentice is not trained or licensed;

(11) - (15) (No change.)

(16) failure to print in proper size type the address and telephone number of the Board[~~,~~] and the statement that the board has jurisdiction over individuals licensed by the board and the Act;

(17) - (19) (No change.)

(20) failure of certified applicator licensee, [~~or~~] technician or apprentice to notify the Board [~~board~~] when he or she moves or changes employers;

(21) failure to maintain continuous minimum liability insurance and continuing to operate during lapsed period;

(22) (No change.)

(23) failure to maintain technician or apprentice training records;

(24) - (32) (No change.)

(33) failure to comply with any section of the Act or Regulations;[~~.~~]

(34) failure to provide a disclosure document prior to, or accompanying, or at the same time, with a written estimate as described in §599.4 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2005.

TRD-200501318

Dale Burnett
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 305-8270

♦ ♦ ♦

22 TAC §597.3

The Texas Structural Pest Control Board proposes an amendment to §597.3 concerning Unlawful Acts. The proposal reflects the codification of the Texas Structural Pest Control Act into the Occupations Code.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed that all parties will know the correct statutory cite to the Texas Structural Pest Control Act.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§597.3. Unlawful Acts.

In addition to the offenses listed in the Texas Structural Pest Control Act (the Act), Occupations Code, Chpt. 1951 [~~§10(A)~~], §597.1(1)-(3) and (7)-(26) of this title (relating to Grounds for Revocation, Suspension, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses) are unlawful acts. Any person who commits an unlawful act is subject to the criminal, civil, and administrative penalties provided by the Act as well as the remedies provided in this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2005.

TRD-200501319
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 305-8270

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE

SUBCHAPTER V. FINANCIAL ASSURANCE FOR CLASS B SEWAGE SLUDGE FOR LAND APPLICATION UNITS

30 TAC §§37.9090, 37.9095, 37.9100, 37.9105, 37.9110, 37.9115, 37.9120, 37.9125, 37.9130, 37.9135, 37.9140, 37.9145, 37.9150, 37.9155

The Texas Commission on Environmental Quality (commission) proposes new §§37.9090, 37.9095, 37.9100, 37.9105, 37.9110, 37.9115, 37.9120, 37.9125, 37.9130, 37.9135, 37.9140, 37.9145, 37.9150, and 37.9155.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking implements the requirements of House Bill 2546, 78th Legislature, 2003, which provides additional restrictions and requirements for persons who land apply Class B sewage sludge to help ensure more protection for citizens, land, and water. A corresponding rulemaking is published in this issue of the *Texas Register* that includes changes to 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation.

SECTION BY SECTION DISCUSSION

New Subchapter V is proposed to be added to Chapter 37 to provide financial assurance requirements relating to commercial liability insurance and environmental impairment insurance for Class B sewage sludge. The new subchapter also outlines the administrative procedures and requirements relating to these types of financial assurance for Class B sewage sludge.

New §37.9090, concerning Applicability, identifies who is subject to this subchapter and those entities that are exempt.

New §37.9095, concerning Definitions, defines the terms that are used throughout this chapter.

New §37.9100, concerning Commercial Liability Insurance, requires a responsible person subject to this subchapter to obtain commercial liability insurance to ensure funds are available to third-party claimants in the event bodily injury or property damage results from Class B sewage sludge land application at the facilities covered. This coverage must be evidenced by either a Certificate of Insurance for Commercial Liability or an Endorsement for Commercial Liability. Minimum requirements of the insurance policy are set out to ensure the agency's financial assurance position is protected. This section also explains that $3 million in coverage will be required to demonstrate financial assurance for all subject facilities and further requires a responsible person to notify the commission whenever a claim results.

New §37.9105, concerning Environmental Impairment Insurance, requires a responsible person subject to this subchapter to obtain environmental impairment insurance to ensure funds are available to the executive director in the event corrective action is required related to the facilities covered. This coverage must be evidenced by a Certificate of Insurance for Environmental Impairment. Minimum requirements of the insurance policy are set out to ensure the agency's financial assurance

position is protected. This section also explains that $3 million in coverage will be required to demonstrate financial assurance for all subject facilities and further requires the responsible person to maintain the policy in full force and effect until the executive director consents to termination of the insurance policy, and that the policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance.

New §37.9110, concerning Submission of Documents, requires that evidence of financial assurance be submitted by the responsible person in conjunction with a Class B sewage sludge land application permit and when requested by the executive director. This section requires that insurance coverage must be in effect on or before the date that a permit application is received by the agency.

New §37.9115, concerning Approval of Mechanisms, explains that the executive director shall determine the acceptability of the financial assurance mechanisms submitted.

New §37.9120, concerning Incapacity of Responsible Person or Insurance Company, requires a responsible person to notify the commission in the event they are named as part of a bankruptcy proceeding. This section also requires a responsible person to obtain alternative insurance coverage in the event the insurance company that issued the current policy declares bankruptcy or experiences an insurance rating downgrade below that of A-.

New §37.9125, concerning Transfer of Ownership or Operational Control, requires a responsible person transferring ownership or operational control to comply with this subchapter until the responsible person assuming the ownership or operational control has demonstrated compliance with this subchapter as determined by the executive director.

New §37.9130, concerning Drawing on the Financial Assurance Mechanisms, allows the executive director to call on the environmental impairment insurance policy when a responsible person fails to perform corrective action when required under this subchapter.

New §37.9135, concerning Continuous Financial Assurance Required, requires the responsible person to maintain continuous financial assurance through the duration of the permit or completion of corrective action, whichever is later.

New §37.9140, concerning Termination of Mechanisms, describes the criteria that must be met before the executive director will release the financial assurance mechanism.

New §37.9145, concerning Certificate of Insurance for Commercial Liability, establishes an acceptable form of providing evidence of commercial liability insurance coverage on behalf of the responsible person. The form must be executed by an authorized representative of the issuing insurance company.

New §37.9150, concerning Endorsement for Commercial Liability, establishes an acceptable form of providing evidence of commercial liability insurance coverage on behalf of the responsible person. The form amends the policy to conform with the criteria set out in §37.9100 and must be executed by an authorized representative of the issuing insurance company.

New §37.9155, concerning Certificate of Insurance for Environmental Impairment, establishes the form that must be executed by an authorized representative of the issuing insurance company to provide evidence of environmental impairment insurance coverage on behalf of the responsible person.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period that the proposed rules are in effect, costs are anticipated for the commission and for other units of local government to implement the proposed new rules, though these costs are not anticipated to be significant. However, for persons who land apply Class B sewage sludge, costs to comply with the proposed requirements for commercial liability and environmental impairment insurance may be significant, depending upon their financial ability to pay.

The proposed new sections would implement requirements of House Bill 2546, which provided new requirements for Class B sludge permit applications, Class B sludge permit holders, and the commission.

Some of the more significant aspects of the rulemaking include the following: any applicant filing for a permit, permit amendment, or permit renewal would be required to send notice of intent to obtain a permit by registered or certified mail to all land owners living within 1/4 mile of the proposed sludge land application unit; land owners living within 1/4 mile of the proposed sludge land application unit would be "affected persons" and as such, may request a contested case hearing without having to demonstrate how they are affected by the proposed permit; applicants would be required to submit proof of commercial liability insurance and environmental impairment insurance, unless they are political subdivisions; all permit applicants would be required to submit a certified nutrient management plan with the permit application, and on an annual basis, demonstrate compliance with the plan; permit holders would be required to submit a computer-generated quarterly report to the commission containing information regarding the source, quality, and quantity of sludge applied to the land; House Bill 2546 requires the commission to create and operate a tracking system that would allow the permit holder to submit quarterly reports; permit holders would be required to post a sign on the property indicating that an active sludge application site is located on the premises; permit holders would be prohibited from accepting Class B sewage sludge that is not transported in covered containers with the covering firmly secured at the front and back; and any sites in counties bordering the Gulf of Mexico that are located within 500 feet of any water well or surface water are prohibited from land application of Class B sludge.

There are 82 sites currently permitted to apply Class B sludge that would be subject to the proposed rules. Twenty four of these sites are owned or operated by units of local government. In addition, approximately 26 domestic wastewater treatment plants that apply Class B sludge would also be subject to the new requirements when they renew their municipal wastewater treatment plant permits. One of the wastewater treatment plants is privately owned and the rest are owned by municipalities.

Units of local government with Class B sewage sludge permits or municipal wastewater treatment plant permits may realize an increase in expenditures for: preparing quarterly reports instead of annual reports; additional recordkeeping and notification requirements; posting signs at the site; and nutrient management plans developed by certified nutrient management specialists. In accordance with House Bill 2546, units of political subdivisions are exempt from the commercial liability and environmental insurance requirements. The proposed new rules also reduce fees for minor permit amendments and permit transfers, but this change is expected to have minimal impact because the change

merely conforms the rules to current agency practice. One-time costs for nutrient management plans are estimated to be $5,000 for each plan, but could be more or less depending upon site characteristics and circumstances. Agency staff are not able to estimate additional costs for the new recordkeeping, reporting, and notification requirements though, in general, these costs are not expected to be significant. Facilities will have to report on a quarterly basis instead of annually and they will have to provide computer-generated reports. A sign posted at the disposal site may cost up to $1,000.

If local governments own or operate sites in a major sole-source impairment zone, there could be additional costs to comply with the proposed phosphorus limits and for creating and maintaining a 200- foot vegetative buffer from surface waters. Additional expenses associated with the creation and maintenance of a vegetative buffer zone are not expected to be significant as the buffer zone may be as simple as using existing or newly established grassy areas. If soil phosphorus levels are above 200 parts per million, a nutrient utilization plan prepared by a certified nutrient management specialist must be implemented. Nutrient utilization plans are estimated to cost approximately the same amount as nutrient management plans, about $5,000 depending upon the site characteristics and circumstances.

House Bill 2546 requires the commission to develop and operate a sludge tracking system that will allow permit holders to electronically report a variety of data including delivery dates, dates of application, as well as the source, quality, and quantity of sludge delivered to the site. The commission will have to enter this data into a new Web-based database, ensure the data is complete and correct, and update its Web site capabilities in order to post the statutorily required information. The commission will also need to update the permit application, instructions, and permit language to include necessary changes resulting from the proposed rule changes. These new requirements may result in additional estimated costs of between $80,000 to $90,000 per year for the commission, though in general these costs are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated will be greater protection for the water resources of the state and compliance with state law.

Fiscal implications are anticipated for owners and operators that land apply Class B sewage sludge. Of the 82 current sites with Class B permits, 58 (approximately 71%) of the sites are privately owned or operated.

Businesses or individuals with Class B sewage sludge permits or municipal wastewater treatment plant permits may realize an increase in expenditures for: preparing quarterly reports; additional recordkeeping and notification requirements; posting signs at the site; and for nutrient management plans. The most significant costs are expected to result from requirements in House Bill 2546 to have two distinct insurance policies, one for commercial liability and the other for environmental impairment. Each of the insurance policies must be in amounts of not less than $3 million. It is estimated that annual premiums for both policies may range between $17,000 and $25,000. Additional recordkeeping, reporting, and notification requirements are not expected to result in significant costs. Costs for nutrient management plans are estimated to cost $5,000 each, but could be more or less depending upon site characteristics and circumstances.

For permit holders located in a major sole-source impairment zone, there may be additional expenses associated with the creation and maintenance of a vegetative buffer zone and for the development and implementation of a nutrient utilization plan. Nutrient utilization plans are estimated to cost approximately the same amount as a nutrient management plans, about $5,000 depending upon the site characteristics and circumstances. Costs to construct a 200-foot vegetative buffer are not expected to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses involved in the land application of Class B sewage sludge. It is not known how many of the 58 currently permitted privately owned Class B sludge sites are small or micro-businesses, but for those that are, additional costs may be expected for preparing quarterly reports, additional recordkeeping requirements, notification requirements, insurance requirements, and paying for nutrient management plans. The largest cost, the annual premiums for the required commercial liability and environmental impairment insurance policies, may range between $17,000 and $25,000.

The following is an analysis of the cost per employee for any small or micro-businesses affected by the proposed insurance requirements and who must pay estimated annual premiums of between $17,000 and $25,000. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. Owners or operators of businesses that apply Class B sludge to land sites with 100 or fewer employees could incur additional costs of between at least $170 to $250 per employee each year. A micro-business with 20 or fewer employees would incur estimated additional costs of between at least $850 and $1,250 per employee. The projected costs are the same for small businesses as for larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to provide additional protection with regard to water quality and the health and safety of the citizens who live near land application sites. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of a major environmental rule.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the proposed rules do not exceed an express requirement of state law but instead implement the statutory requirements requiring financial assurance requirements relating to commercial liability insurance and environmental impairment insurance for Class B sewage sludge. Third, there is no delegation agreement that would be exceeded by these proposed rules because none relates to this subject matter area. Fourth, the commission proposes these rules under the rulemaking direction of House Bill 2546, and not solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to provide additional protection with regard to water quality and the health and safety of the citizens who live near land application sites. The proposed rules would substantially advance this stated purpose by adding several requirements intended to improve tracking and reporting of regulated sites and the quality of sludge; adding several additional requirements for applicants, such as nutrient management plans and proof of insurance coverage; and restricting permittees from accepting sludge transported in open containers.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed rules would improve the commission's ability to ensure proper management of the land application of Class B sewage sludge. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed rules are consistent with CMP goals and policies because the rulemaking is an administrative rule that includes financial assurance, notice, and other procedural requirements for permit holders of Class B sewage sludge; will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the rules will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 3, 2005 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-055-312-WT. Comments must be received by 5:00 p.m., May 9, 2005. For further information or questions concerning this proposal, please contact Beth Fraser, Water Quality Division, at (512) 239-2526.

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code,

§361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission shall adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The proposed new sections implement House Bill 2546.

§37.9090. Applicability.

(a) This subchapter applies to a responsible person, as defined in Texas Health and Safety Code, §361.121(a)(3), holding or applying for a Class B sewage sludge permit under §312.11 of this title (relating to Permits).

(b) This subchapter does not apply to state or federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(c) This subchapter does not apply to political subdivisions.

(d) This subchapter establishes requirements and mechanisms for demonstrating financial assurance for environmental impairment and commercial liability insurance coverages.

§37.9095. Definitions.

(a) Definitions for terms that appear throughout this subchapter are defined in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §312.8 of this title (relating to General Definitions), and Solid Waste Disposal Act, §361.121 (relating to Land Application of Certain Sludge; Permit Required).

(b) In the liability insurance requirements of this subchapter, the terms "bodily injury" and "property damage" have the meanings given these terms by applicable state law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The commission intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry.

(c) For the purposes of this subchapter, corrective action includes the activities to remediate events resulting from a permitted sewage sludge land application facility in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program) or otherwise directed by the executive director.

§37.9100. Commercial Liability Insurance.

(a) A responsible person subject to this subchapter shall obtain and maintain a commercial liability insurance policy that must:

(1) reflect the responsible person as the insured;

(2) reflect total coverage of not less than $3 million per occurrence with an annual aggregate of not less than $3 million, exclusive of legal defense costs;

(3) be issued by an insurance company licensed to transact the business of insurance in Texas or eligible to provide insurance as an excess or surplus lines insurer in Texas that has a rating of A- or better by A.M. Best Company;

(4) designate the Texas Commission on Environmental Quality as an additional insured; and

(5) be evidenced by either a certificate of insurance worded identically to the wording specified in §37.9145 of this title (relating to Certificate of Insurance for Commercial Liability) or an endorsement worded identically to the wording specified in §37.9150 of this title (relating to Endorsement for Commercial Liability).

(b) The insurance afforded under the policy must provide that:

(1) it guarantees bodily injury and property damage protection by allowing compensation to all persons injured or property damaged as a result of Class B sewage sludge land application and entitled to compensation under the applicable provisions of state law;

(2) bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which the required certificate of insurance or endorsement is attached;

(3) the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement from the insured for any such payment made by the insurer;

(4) cancellation of the insurance, whether by the insurer, the insured, or a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the executive director;

(5) any other termination of this insurance will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by the executive director;

(6) whenever requested by the executive director, the insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements; and

(7) the insurer shall notify the executive director within 30 days by certified mail in the event the insurance policy expires or is not renewed unless prior notice has been given in accordance with this subsection.

(c) A single $3 million annual aggregate coverage and per occurrence limit may be obtained for all facilities for which the responsible person is required to provide commercial liability insurance.

(d) The responsible person shall notify the executive director in writing within 30 days whenever a claim results in a reduction in the amount of liability coverage required by this subchapter.

§37.9105. Environmental Impairment Insurance.

(a) A responsible person subject to this subchapter shall obtain and maintain an environmental impairment insurance policy that must:

(1) reflect the responsible person as the insured;

(2) reflect total coverage of not less than $3 million per occurrence with a policy limit of not less than $3 million, exclusive of legal defense costs;

(3) be issued by an insurance company licensed to transact the business of insurance in Texas or eligible to provide insurance as an excess or surplus lines insurer in Texas that has a rating of A- or better by A.M. Best Company;

(4) designate the Texas Commission on Environmental Quality as an additional insured; and

(5) be evidenced by a certificate of insurance worded identically to the wording specified in §37.9155 of this title (relating to Certificate of Insurance for Environmental Impairment).

(b) The insurance afforded under the policy must provide the following.

(1) The insurance policy must guarantee that funds be available to provide for corrective action related to the facility. The policy must also guarantee that once corrective action begins, the insurer shall be responsible for paying out funds, up to an amount equal to the policy limit, upon the direction of the executive director, to such party or parties as the executive director specifies.

(2) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the policy limit of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the responsible person and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the executive director and the responsible person, as evidenced by the return receipts.

(3) Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(A) corrective action is ordered by the executive director or by a United States district court or other court of competent jurisdiction;

(B) the responsible person is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(C) the premium due is paid.

(4) Each policy must contain a provision allowing assignment of the policy to a successor responsible person. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(5) Whenever requsted by the executive director, the insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.

(c) A single $3 million policy limit and per occurrence limit may be obtained for all facilities for which the responsible person is required to provide environmental impairment insurance.

(d) The responsible person must maintain the policy in full force and effect until the executive director consents to termination of the policy. Failure to pay the premium, without substitution of alternate environmental impairment insurance coverage as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary including revocation of the permit.

(e) The policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance with a statute, regulation, order, notice, or government instruction.

§37.9110. Submission of Documents.

(a) As part of a Class B sewage sludge land application permit, a responsible person subject to this subchapter must submit:

(1) either a Certificate of Insurance for Commercial Liability or Endorsement for Commercial Liability as evidence of commercial liability insurance coverage; and

(2) a Certificate of Insurance for Environmental Impairment as evidence of environmental impairment insurance coverage.

(b) The mechanisms must reflect that insurance coverage is in effect on or before the date that the permit application is received.

(c) When requested by the executive director, a responsible person subject to this subchapter must submit proof of Environmental Impairment and/or Commercial Liability insurance.

§37.9115. Approval of Mechanisms.

The executive director shall determine the acceptability of the mechanisms submitted.

§37.9120. Incapacity of Responsible Person or Insurance Company.

(a) A responsible person must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the responsible person, within ten business days after the commencement of the proceeding.

(b) A responsible person shall be deemed to be without the required financial assurance coverage in the event the insurance company(ies) providing either the commercial liability or environmental impairment policies:

(1) declares bankruptcy; or

(2) experiences an insurance rating reduction resulting in a rating below A- as published by the A.M. Best Company.

(c) The responsible person must provide evidence of insurance coverage as described in this subchapter within 60 days after any events as described in subsection (b) of this section.

§37.9125. Transfer of Ownership or Operational Control.

When a transfer of ownership or operational control occurs, the responsible person transferring ownership or operational control shall comply with the requirements of this subchapter, until the executive director determines that the responsible person assuming the ownership or operational control of the facility has demonstrated compliance with the requirements of this subchapter.

§37.9130. Drawing on the Financial Assurance Mechanisms.

The executive director shall make a written demand for performance under the environmental impairment policy when a responsible person who is required to comply with this subchapter has failed to perform corrective action when required.

§37.9135. Continuous Financial Assurance Required.

The responsible person required by this subchapter to provide financial assurance for environmental impairment and commercial liability insurance coverage shall maintain continuous financial assurance coverage for the duration of the permit or, if corrective action is required, after corrective action has been completed and until such time as the executive director has provided written consent to termination in accordance with §37.9140 of this title (relating to Termination of Mechanisms).

§37.9140. Termination of Mechanisms.

Upon written request of the responsible person, the executive director shall provide written consent to termination of the insurance coverages described in this subchapter when:

(1) a responsible person substitutes and receives approval from the executive director for alternate insurance coverages as specified in this subchapter; or

(2) the permit is revoked, cancelled, expired, or, if corrective action is required, after such corrective action has been completed and approved by the executive director.

§37.9145. Certificate of Insurance for Commercial Liability.

A certificate of insurance for commercial liability, as specified in §37.9100 of this title (relating to Commercial Liability Insurance), must be worded as specified in the Certificate of Insurance for Commercial Liability in this section, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

Figure: 30 TAC §37.9145

§37.9150. Endorsement for Commercial Liability.

A liability endorsement as specified in §37.9100 of this title (relating to Commercial Liability Insurance) must be worded as specified in the Endorsement for Commercial Liability in this section, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

Figure: 30 TAC §37.9150

§37.9155. Certificate of Insurance for Environmental Impairment.

A certificate of insurance for environmental impairment, as specified in §37.9105 of this title (relating to Environmental Impairment Insurance), must be worded as specified in the Certificate of Insurance for Environmental Impairment in this section, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

Figure: 30 TAC §37.9155

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501282
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 239-5017

♦ ♦ ♦

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER F. EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

DIVISION 3. OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND ACTIONS TO REDUCE EXCESSIVE EMISSIONS

30 TAC §§101.221 - 101.223

The Texas Commission on Environmental Quality (commission) proposes amendments to §§101.221 - 101.223.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking action would extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of §§101.221 - 101.223 to the EPA for review and approval into the SIP. If the commission submits these revisions to the EPA, these sections would expire on June 30, 2006.

SECTION BY SECTION DISCUSSION

The proposed revisions to §§101.221 - 101.223 delete references to the June 30, 2005, expiration and replace it with a new expiration date of January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval into the SIP. The proposed revisions further provide that if the commission submits a revised version of these sections, these sections expire on June 30, 2006.

The commission is seeking comment specifically regarding the proposed changes to §§101.221(g), 101.222(h), and 101.223(e). The commission is not seeking comment on, nor does it intend to make changes to, any other subsections of these sections. Simultaneously with this proposal, the commission initiated a stakeholder process to receive input regarding possible changes to the other subsections as well as the associated reporting rules, §101.210 and §101.211. This extension will allow additional time for the commission to obtain stakeholder input as part of its plan to address §§101.201 - 101.223 in a subsequent rulemaking.

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for units of state and local governments due to implementation of the proposed amendments. The proposed amendments do not implement additional requirements that are not already required by the commission.

PUBLIC BENEFIT AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from extension of the expiration date would be to continue the rules currently in effect. The proposed amendments do not implement additional requirements that are not already required by the commission. The commission anticipates the proposed amendments will not result in fiscal implications for individuals and businesses.

SMALL AND MICRO-BUSINESS ASSESSMENT

There will not be adverse fiscal implications for small and micro-businesses due to implementation of the proposed amendments, which are intended to extend the expiration date of these rules. The proposed amendments do not implement additional requirements. The commission anticipates the proposed amendments will not result in fiscal implications for small and micro- businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required, because the proposed rulemaking action does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government

Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are intended to extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval into the SIP. If the commission submits a revised version of these sections, these sections expire on June 30, 2006. The proposed amendments will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed amendments. The specific purpose of this rulemaking is to extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval into the SIP. If the commission submits a revised version of these sections, these sections expire on June 30, 2006. Promulgation and enforcement of the proposed amendments would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the adopted amendments will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Sections 101.221 - 101.223 are applicable requirements under 30 TAC Chapter 122, Federal Operating Permits. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permits Program will be required to certify compliance with amended §§101.221 - 101.223.

ANNOUNCEMENT OF HEARING

A public hearing for this proposed rulemaking has been scheduled for April 26, 2005, at 2:00 p.m., at the Texas Commission on Environmental Quality, 12100 North I-35, Building A, Room 328, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A five-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-023-101-AI. Comments must be received no later than 5:00 p.m., April 26,

2005. For further information, please contact Steve Ligon, Field Operations Division at (512) 239-1526.

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; §382.05101, concerning *De Minimis* Air Contaminants, which authorizes the commission to develop by rule the criteria to establish a *de minimis* level of air contaminants for which a permit is not required; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

§101.221. Operational Requirements.

(a) - (f) (No change.)

(g) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006 [~~June 30, 2005~~].

§101.222. Demonstrations.

(a) - (g) (No change.)

(h) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006 [~~June 30, 2005~~].

§101.223. Actions to Reduce Excessive Emissions.

(a) - (d) (No change.)

(e) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006 [~~June 30, 2005~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501289
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 239-6087

♦ ♦ ♦

CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§312.4, 312.8 - 312.13, 312.44, 312.48, 312.82, 312.122, and 312.145.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking implements the requirements of House Bill (HB) 2546, 78th Legislature, 2003, which provides additional restrictions and requirements for persons who land apply Class B sewage sludge to help ensure more protection for citizens, land, and water. A corresponding rulemaking is published in this issue of the *Texas Register* that includes changes to 30 TAC Chapter 37, Financial Assurance.

SECTION BY SECTION DISCUSSION

Administrative changes are proposed throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, October 2002 and change "TNRCC" to "TCEQ."

Section 312.4, Requirements for Sewage Sludge Permit, Registration, or Notification, is proposed to amend the title to "Required Authorizations or Notifications." A provision is added to allow continuation of land application of Class B sewage sludge under existing registration if an administratively complete permit application has been submitted on or before September 1, 2002. This extension will cease when a final decision on the permit application is made by the commission. Subsection (a)(1) adds the requirement that all registrations for the land application of Class B sewage sludge will expire on or before August 31, 2003, unless an administratively complete permit application was submitted on or before September 1, 2002, in which case the person holding such registration may continue operations under the existing registration until final commission action on the permit application. Paragraph (1) states that for registrations that also authorize the use of Class A sewage sludge, domestic septage, or water treatment plant sludge, only the provisions for the use of Class B sewage sludge expire on August 31, 2003; the other provisions expire on the expiration date of the registration or when a permit is issued for the site. The clause "All provisions for this activity in any registration are void after August 31, 2003" is deleted from this subsection. A new paragraph (5) adds the HB 2546 provision prohibiting the issuance of a Class B sludge land application permit for a unit located in a county that borders the Gulf of Mexico and is within 500 feet of any water well or surface water. Subsection (b)(2) has been reformatted and names have been updated to enhance clarity and readability. Existing language in

subsection (c) has been repealed and replaced with new subsection (c)(1) stating that "Effective September 1, 2003, registrations may only be obtained for the land application of Class A sludge that does not meet the requirements of subsection (b) of this section, water treatment plant sludge, and domestic septage." New subsection (c)(2) states that "The effective date of the registration is the date that the executive director signs the registration in accordance with §312.12(d) of this title. Site registration information on file with the commission must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or requested by the executive director." The commission proposes to delete subsection (d) pertaining to term limits for registrations and permits and move the unchanged language to §310.10(a), and reletter current subsection (e) as subsection (d). The commission proposes to delete subsection (f) pertaining to Class B sewage sludge land application permit application fees and move to §312.9.

Section 312.8, General Definitions, is proposed to add, delete, and renumber definitions as appropriate. A new paragraph (10) has been added to define "Applied uniformly." Paragraph (15), which defines "CFR" as Code of Federal Regulations, is deleted because it is not necessary. A new paragraph (16) has been added to define "Certified nutrient management specialist." A new paragraph (41) has been added to define "Harvesting." A new paragraph (43) has been added to define "Incorporation." A new paragraph (53) has been added to define "Major sole-source impairment zone." A new paragraph (78) has been added to define "Sole-source surface drinking water supply."

Section 312.9, Sludge Fee Program, is proposed to change subsections (b) and (d) to modify the due date for annual reports to September 30. Subsection (d) is amended to add a requirement that provides the annual reporting period to be the period from September 1 of the previous calendar year to August 31 of the current calendar year, and the fees assessed in subsection (b) must be paid by the registrant or permittee on or before the due date specified in the invoice. In subsection (d), "Texas Natural Resource Conservation Commission (TNRCC)" is replaced with "Texas Commission on Environmental Quality." A new subsection (g) is added to list the requirements for permit application fees for land application of Class B sewage sludge that were previously listed under §312.4(f) and add a new subsection (g)(1) that clarifies that the applications for a minor amendment or permit transfer related to Class B sewage sludge land application permits would be subject to 30 TAC §305.53 instead of the fee structure of the new subsection (f).

Section 312.10, Permits and Registration Applications Processing, is proposed to reword subsection (b) to improve clarity. Outdated names are corrected in subsections (c) and (d). Subsection (d) updates references by adding a reference to Texas Water Code, §5.552(c), and requires that the public notice include the anticipated date of the first land application of sludge to the proposed land application unit as required by HB 2546. Subsection (f) is revised to improve clarity. The existing language in subsection (g), which was nullified by HB 2546, is deleted and replaced with new language that states "All registration applications for Class A sludge, water treatment plant sludge, and domestic septage are subject to the application processing procedures and requirements in §§281.18 - 281.20 of this title." Subsection (h) extends the provisions of this subsection pertaining to cancellation requests to permits. Subsection (i) clarifies that it is applicable to all registrations and permits instead of to only registrations and permits for land application of sewage sludge. Subsection (j) corrects a grammatical error. Subsection (k) updates applicability of requirements for major amendments to registrations by excluding sludge registrations that are now authorized under a permit. The commission proposes to create a new subsection (m) to incorporate the language moved from §312.4(d), pertaining to term limits for registrations and permits.

Section 312.11, Permits, is proposed to amend subsection (a) by adding the unchanged existing language in subsection (d)(5), which is proposed to be deleted. Subsection (c) is proposed to delete the existing language and restructure the subsection for clarity and readability. The first line of subsection (d) has been reworded to improve clarity and readability. In subsection (d)(2)(F), relettered as subsection (d)(2)(E), the acronym for NRCS is used as it was defined previously in the section. New subsection (d)(5) requires Class B sewage sludge land application permit applicants to submit proof of a commercial liability insurance policy and environmental impairment policy. New subsection (d)(6) requires Class B sewage sludge land application permit applicants to submit a nutrient management plan (NMP) prepared by a certified nutrient management specialist. Existing subsection (d)(5) is deleted and moved to subsection (a). New subsection (e) requires permittees of Class B sewage sludge land application sites to comply with the requirements of Chapter 37, Subchapter V. Existing subsections (e) - (g) are relettered to subsections (f) - (h). Existing subsection (h) is relettered to subsection (i), the requirements for permittees to provide written notice of changes under certain conditions are moved to new subsection (j) for clarity and readability. New subsection (k) provides requirements for facilities located in a major sole-source impairment zone. New subsection (k)(1) states that the permittee is required to have a nitrogen and phosphorus-based NMP prepared by a certified nutrient management specialist per certain standards. New subsection (k)(2) requires that when annual soil tests indicate phosphorus levels greater than 200 parts per million in the zero to six-inch zone, the permittee is required to follow a nutrient utilization plan (NUP) approved by the commission. New subsection (k)(3)(A) - (H) lists the types of people who are authorized to develop a NUP. New subsection (k)(4) requires a permittee to follow the NUP until the phosphorus levels fall below the critical level. Thereafter, the permittee can resume implementing the requirements of the NMP. New subsection (k)(5) requires the permittee to maintain a vegetative cover in the designated buffer zones.

Section 312.12, Registration of Land Application Activities, is proposed to amend the title of the section to "Registrations." Subsection (b) updates the name of a subsection cited, deletes a reference to §312.11, and rewords this subsection to limit its applicability to Class A sludge, water treatment sludge, and/or domestic septage. The words "sewage sludge" have been replaced by "material to be land applied" as appropriate throughout subsection (b)(1), except subsection (b)(1)(C)(iv), where the word "sewage sludge" was replaced by "Class A sludge, water treatment sludge, and/or domestic septage." This was amended because, as required by HB 2912 and HB 2546, a Class B sewage sludge land application site requires a permit, not a registration. Subsection (b)(1)(E) is proposed to delete the requirement that the notarized signature of each applicant be checked against the commission requirements. The words "as applicable" are inserted in subsection (b)(1)(H) - (J) to account for the fact that the information requested to be submitted may be applicable to only certain types of registration applications. Subsection (b)(1)(H)(ii) has been reworded and reformatted for clarity and readability and to also include existing requirements from subsection (b)(1)(H)(iv). Subsection (b)(2) deletes the words "have

the continuing obligation to" to improve clarity and readability. Subsection (c) has been streamlined to eliminate its applicability to sewage sludge registrations, which are no longer allowed under HB 2912 and HB 2546. A new subsection (e) requires that the special provisions for sites located in sole-source impairment zones listed in §312.11(l) are also applicable to registered land application sites.

Section 312.13, Actions and Notice, is proposed to amend subsection (b)(2) to delete redundant citations, and delete the outdated requirement of notice to landowners adjacent to any proposed Class B sewage sludge land application site. New subsection (b)(3) lists the actions and new notice requirements of HB 2546 for land application of Class B sewage sludge. New subsection (b)(3)(A) lists the applicable citations, requires that the public notice include anticipated first date of land application of sludge to the site, and requires that the notice also be sent to landowners living on the property located within 1/4 mile of any proposed site. New subsection (b)(3)(B) notes that a resident landowner within 1/4 mile of the proposed sludge land application site is considered an "affected person." Amendments to subsection (c) correct citations, names, remove inconsistencies, and update the rules, including removal of the outdated phrase regarding registration requirements for Class B sludge land application, which is no longer allowed. Subsection (c)(1) is amended to specify that the public notice requirements are not applicable to water treatment sludge registrations.

Section 312.44, Management Practices, is proposed to improve clarity and readability in subsections (a) and (b). Subsection (c) is amended to include the existing subsection (d) and is reworded, simplified, and reformatted to improve clarity and readability. New subsection (c) is proposed to add a provision requiring vegetative cover on a 200-foot buffer zone for sites located in a major sole-source impairment zone. Subsection (e) is relettered to subsection (d), the citations are corrected, and updates are made to the language to extend the buffer zone requirements to permits as well as registrations. Subsection (f) is relettered as subsection (e), and language is moved to relettered subsection (f). Subsection (g) is relettered as subsection (f) and now includes the provision that is deleted and moved from the previous subsection regarding the option of temporarily allowing the sludge application rates to exceed the agronomic rates on a case-by-case basis for reclamation sites. Subsections (h) and (i) and are relettered as subsections (g) and (h), respectively. New subsection (h)(2) - (6) use the word "shall" in place of "may" with regard to the site conditions under which sewage sludge "may" not be applied. Subsection (j) is relettered as subsection (i) and makes a grammatical correction. Subsection (k) is relettered to subsection (j), and subsection (j)(1) is reworded to provide that a land application site "must" (previously "shall") be selected and the site operated in a manner to prevent public health nuisances. Subsection (l) is relettered to subsection (k) and extends soil testing requirements to sludge land application permits. Subsection (k)(1) and (2) is reworded for clarity and readability. In accordance with HB 2546, new subsection (l) requires that a sign be posted on a Class B sewage sludge land application site meeting the specified requirements, and new subsection (m) specifies that a Class B sewage sludge land application permit holder must ensure that the sludge is delivered to the site in a covered container with covering secured firmly at the front and back.

Section 312.48, Reporting, is proposed to update names and make grammatical corrections. The amendments to paragraph (1) group the current provisions with some changes for clarity and readability into a new paragraph (1)(A) and require that annual reports be submitted by September 30 of each year. New paragraph (1)(B) incorporates the current provisions in paragraph (2) and also changes the submission date to September 30. New paragraph (1)(C) requires that a Class B sewage sludge land application permit holder submit evidence of compliance with an NMP, a completed Annual Sludge Summary Report Form, and proof of commercial liability insurance and environmental impairment insurance. New paragraph (2) lists the requirements for and the contents of quarterly reports, and the due dates for Class B sewage sludge land application permit holders.

Section 312.82, Pathogen Reduction, is proposed to make grammatical corrections to subsection (a) by replacing "give" with "given" where applicable to sewage that is prepared for sale or given away in a bag or other container. Subsection (b)(1)(C) is updated to require that a minimum of seven representative samples of sewage sludge be taken for fecal coliform testing by adding the word "representative" to be consistent with 40 Code of Federal Regulations Part 503 federal regulations. Subsection (b)(3)(F) requires that the turf grown on land where sewage sludge is applied "may" (instead of "shall") not be harvested for at least one year after application of sewage when this turf is used on a land with high potential for public exposure or a lawn.

Section 312.122, Registrations and Permits, is proposed to replace TNRCC with commission and Watershed Management Division with Water Quality Division.

Section 312.145, Transporters-Recordkeeping, is proposed to modify subsection (a) related to trip tickets by replacing "shall" with "must." Subsection (b)(2) is amended to rename the catchline. Subsection (b)(4) is amended to rename the catchline and to change the reporting deadline to be more reasonable. Subsection (d) updates the agency name.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period that the proposed rules are in effect, costs are anticipated for the agency and for other units of local government to implement the proposed amendments, though these costs are not anticipated to be significant. However, for persons who land apply Class B sewage sludge, costs to comply with the proposed requirements for commercial liability and environmental impairment insurance may be significant, depending upon their financial ability to pay.

The proposed amendments implement requirements of HB 2546, which provided new requirements for Class B sludge permit applications, Class B sludge permit holders, and the commission.

Some of the more significant aspects of the rulemaking include the following: any applicant filing for a permit, permit amendment, or permit renewal would be required to send notice of intent to obtain a permit by registered or certified mail to all land owners living within 1/4 mile of the proposed sludge land application unit; land owners living within 1/4 mile of the proposed sludge land application unit would be "affected persons" and as such, may request a contested case hearing without having to demonstrate how they are affected by the proposed permit; applicants would be required to submit proof of commercial liability insurance and environmental impairment insurance, unless they are political subdivisions; all permit applicants would be required to submit a certified NMP with the permit application, and on an annual basis, demonstrate compliance with the plan;

permit holders would be required to submit a "computer-generated" quarterly report to the commission containing information regarding the source, quality, and quantity of sludge applied to the land; the commission would be required to create and operate a tracking system that would allow the permit holder to submit quarterly reports in accordance with HB 2546; permit holders would be required to post a sign on the property indicating that an active sludge application site is located on the premises; permit holders would be prohibited from accepting Class B sewage sludge that is not transported in covered containers with the covering firmly secured at the front and back; and any sites in counties bordering the Gulf of Mexico that are located within 500 feet of any water well or surface water are prohibited from land application of Class B sludge.

There are 82 sites currently permitted to apply Class B sludge that would be subject to the proposed rules. Twenty-four of these sites are owned or operated by units of local government. In addition, approximately 26 domestic wastewater treatment plants that apply Class B sludge would also be subject to the new requirements when they renew their municipal wastewater treatment plant permits. One of the wastewater treatment plants is privately owned and the rest are owned by municipalities.

Units of local government with Class B sewage sludge permits or municipal wastewater treatment plant permits may realize an increase in expenditures for: preparing quarterly reports in addition to annual reports; additional recordkeeping and notification requirements; posting signs on the site; and NMPs developed by certified nutrient management specialists. In accordance with HB 2546, units of political subdivisions are exempt from the commercial liability and environmental insurance requirements. The proposed rules also reduce fees for minor permit amendments and permit transfers, but this change is expected to have minimal impact because the change merely conforms the rules to current agency practice. One-time costs for NMPs are estimated to be $5,000 for each plan, but could be more or less depending upon site characteristics and circumstances. Agency staff are not able to estimate additional costs for the new recordkeeping, reporting, and notification requirements though, in general, these costs are not expected to be significant. Facilities will have to report on a quarterly basis in addition to annually, and they will have to provide computer-generated reports. A sign posted on the disposal site may cost up to $1,000.

If local governments own or operate sites in a major sole-source impairment zone, there could be additional costs to comply with the proposed phosphorus limits and for creating and maintaining a 200-foot vegetative buffer from surface waters. Additional expenses associated with the creation and maintenance of a vegetative buffer zone are not expected to be significant as the buffer zone may be as simple as using existing or newly established grassy areas. If soil phosphorus levels are above 200 parts per million, a NUP prepared by a certified nutrient management specialist must be implemented. NUPs are estimated to cost approximately the same amount as NMPs, about $5,000 depending upon the site characteristics and circumstances.

HB 2546 requires the commission to develop and operate a sludge tracking system that will allow permit holders to electronically report a variety of data including delivery dates, dates of application, as well as the source, quality, and quantity of sludge delivered to the site. The agency will have to enter this data into a new Web-based database, ensure the data is complete and correct, and update its Web site capabilities in order to post the statutorily required information. The agency will also need to update the permit application, instructions, and permit language to include necessary changes resulting from the proposed rule changes. These new requirements may result in additional estimated costs of between $80,000 to $90,000 per year for the agency, though in general these costs are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated will be greater protection for the water resources of the state and compliance with state law.

Fiscal implications are anticipated for owners and operators that land apply Class B sewage sludge. Of the 82 current sites with Class B permits, 58 of the sites (approximately 71%) are privately owned or operated.

Businesses or individuals with Class B sewage sludge permits or municipal wastewater treatment plant permits may realize an increase in expenditures for: preparing quarterly reports; additional recordkeeping and notification requirements; posting signs at the site; and for NMPs. The most significant costs are expected to result from requirements in HB 2546 to have two distinct insurance policies, one for commercial liability and the other for environmental impairment. Each of the insurance policies must be in amounts of not less than $3 million. It is estimated that annual premiums for both policies may range between $17,000 and $25,000. Additional recordkeeping, reporting, and notification requirements are not expected to result in significant costs. Costs for NMPs are estimated to cost $5,000 each, but could be more or less depending upon site characteristics and circumstances.

For permit holders located in a major sole-source impairment zone, there may be additional expenses associated with the creation and maintenance of a vegetative buffer zone and for the development and implementation of a NUP. NUPs are estimated to cost approximately the same amount as NMPs, about $5,000 depending upon the site characteristics and circumstances. Costs to construct a 200-foot vegetative buffer are not expected to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses involved in the land application of Class B sewage sludge. It is not known how many of the 58 currently permitted privately owned Class B sludge sites are small or micro-businesses, but for those that are, additional costs may be expected for preparing quarterly reports, additional recordkeeping requirements, notification requirements, insurance requirements, and paying for NMPs. The largest cost, the annual premiums for the required commercial liability and environmental impairment insurance policies, may range between $17,000 and $25,000.

The following is an analysis of the cost per employee for any small or micro-businesses affected by the proposed insurance requirements and who must pay estimated annual premiums of between $17,000 and $25,000. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. Owners or operators of businesses that apply Class B sludge to land sites with 100 or fewer employees could incur additional costs of between at least $170 to $250 per employee each year. A micro-business with 20 or less employees would incur estimated additional costs of between at least $850 and $1,250 per

employee. The projected costs are the same for small businesses as for larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to provide additional protection with regard to water quality and the health and safety of citizens who live near a land application site. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of a major environmental rule.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the proposed rules do not exceed an express requirement of state law but instead implement the statutory requirements for the land application of sewage sludge. Third, there is no delegation agreement that would be exceeded by these proposed rules because none relates to this subject matter area. Fourth, the commission proposes these rules under the rulemaking direction of HB 2546 and not solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to provide additional protection with regard to water quality and the health and safety of citizens who live near a land application site. The proposed rules would substantially advance this stated purpose by adding several requirements intended to improve tracking and reporting of regulated sites and the quality of sludge; adding several additional requirements for applicants, such as NMPs and proof of insurance coverage; and restricting permittees from accepting sludge transported in open containers.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed rules would improve the commission's ability to ensure proper management of the land application of Class B sewage sludge. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because the rulemaking is an administrative rule that includes financial assurance, notice, and other procedural requirements for permit holders of Class B sewage sludge; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 3, 2005, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-055-312-WT. Comments must be received by 5:00 p.m., May 9, 2005. For further information or questions concerning this proposal, please contact Beth Fraser, Water Quality Division, at (512) 239-2526.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§312.4, 312.8 - 312.13

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission shall adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The proposed amendments implement HB 2546.

§312.4. Required Authorizations or Notifications [~~Requirements for Sewage Sludge Permit, Registration, or Notification~~].

(a) Permits. Except where in conflict with other chapters in this title, a permit shall be required before any storage, processing, incineration, or disposal of sewage sludge, except for storage allowed under this section, §312.50 of this title (relating to the Storage and Staging of Sludge at Beneficial Use Sites), §312.61(c) of this title (relating to Applicability), §312.147 of this title (relating to Temporary Storage), and §312.148 of this title (relating to Secondary Transportation of Waste). Any permit authorizing disposal of sewage sludge shall be in accordance with any applicable standards of Subchapter C of this chapter (relating to Surface Disposal) or §312.101 of this title (relating to Incineration). No permit will be required under this chapter if issued pursuant to other requirements of the commission, as specified in §312.5 of this title (relating to Relationship to Other Requirements).

(1) Effective September 1, 2003, a permit is required for the beneficial land application of Class B sewage sludge. All registrations for the land application of Class B sewage sludge will expire on or before August 31, 2003. A person holding a registration to land apply sewage sludge who submitted an administratively complete permit application on or before September 1, 2002, may continue operations under the existing registration until final commission action on the permit application. For registrations that also authorize the use of Class A sewage sludge, domestic septage, or water treatment plant sludge, only the provisions for the use of Class B sewage sludge will expire on August 31, 2003; the other provisions will expire on the expiration date of the registration or when a permit is issued for the site. [~~All provisions for this activity in any registration are void after August 31, 2003.~~]

(2) (No change.)

(3) Site permit information on file with the commission must [~~shall~~] be confirmed or updated, in writing, whenever the mailing address and/or [~~,~~] telephone number of the owner or operator is changed, or whenever requested by the commission.

(4) (No change.)

(5) The commission may not issue a Class B sewage sludge permit for a land application unit that is located both in a county that borders the Gulf of Mexico and within 500 feet of any water well or surface water.

(b) Notification of certain Class A sewage sludge land application activities.

(1) If sewage sludge meets the metal concentration limits in §312.43(b)(3) [~~(Table 3)~~] of this title (relating to Metal Limits), the Class A pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one of the requirements in §312.83(b)(1) - (8) of this title (relating to Vector Attraction Reduction), it will not be subject to the requirements of §312.10 of this title (relating to Permit and Registration Applications Processing), §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registration of Land Application Activities), and §312.13 of this title (relating to Actions and Notices), except as provided in this subsection.

(2) Any [~~At least 30 days prior to engaging in such activity for the first time, any~~] generator in Texas or any person who first conveys sewage sludge from out of state into the State of Texas and who proposes to store, land apply, or market and distribute sewage sludge meeting the standards of this subsection shall submit [~~a~~] notification to [~~form approved by~~] the executive director, at least 30 days prior to engaging in such activities for the first time on a form approved by the executive director. A completed notification form shall be submitted to the Land Application [~~Agriculture~~] Team of the Water Quality Division by certified mail, return receipt requested. The notification must [~~shall~~] contain information detailing:

(A) - (B) (No change.)

(C) a description in a marketing and distribution plan that [~~which~~] describes any of the following activities:

(i) - (iii) (No change.)

(iv) a description of any proposed storage and the methods that [~~which~~] will be employed to prevent surface water runoff of the sewage sludge or contamination of groundwater.

(3) (No change.)

(4) Annually, on September 1, each person subject to notification of certain Class A sewage sludge activities required by this subsection shall provide a report to the commission, which shows in detail all activities described in paragraph (2) of this subsection that occurred in the reporting period. The report must [~~shall~~] include an update of new information since the prior report or notification was submitted and all newly proposed activities. The report must [~~shall~~] also include a description of the annual amounts of sewage sludge provided to each initial receiver from the in-state generator and for persons who convey out-of-state sewage sludge into Texas, the amounts provided from this person directly to any initial receivers. This report can be combined with the annual report(s) required under §312.48 of this title (relating to Reporting), §312.68 of this title (relating to Reporting), or §312.123 of this title (relating to Annual Report).

(c) Registration of land application sites.

(1) Effective September 1, 2003, registrations may only be obtained for the land application of Class A sludge that does not meet the requirements of subsection (b) of this section, water treatment plant sludge, and domestic septage.

(2) The effective date of the registration is the date that the executive director signs the registration in accordance with §312.12(d) of this title. Site registration information on file with the commission must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or requested by the executive director.

[~~(1) If the requirements in Subchapter B of this chapter (relating to Land Application for Beneficial Use) are met and a sewage sludge does not meet the requirements of subsection (b) of this section, a site shall be registered for the land application of sewage sludge for beneficial use, in accordance with the requirements of §312.12 and §312.13 of this title unless a permit is issued under §312.11 of this title.~~]

[~~(2) Registrations for the use of Class B sewage sludge shall expire on or before August 31, 2003. If the registration is scheduled to expire after August 31, 2003, and authorizes the use of Class A sewage sludge, domestic septage or water treatment plant sludge, only the provisions for the use of Class B sewage sludge shall expire on August 31, 2003; the other provisions shall expire on the expiration date of the registration or when a permit is issued for the site.~~]

[~~(3) Upon the effective date of these rules:~~]

[~~(A) the executive director shall not accept registration applications for land application of Class B sewage sludge;~~]

[~~(B) only permit applications will be accepted; and~~]

[~~(C) for pending registration applications, the executive director shall process either the pending registration application or a permit application (if submitted) for the same site, but not both.~~]

[~~(4) The effective date for the registration of a site at which sewage sludge is applied to the land for beneficial use is the date that the executive director signs the registration, in accordance with §312.12(d) of this title. Site registration information on file with the commission shall be confirmed or updated, in writing, whenever:~~]

[~~(A) the mailing address and/or telephone number of the owner or operator is changed; or~~]

[~~(B) requested by the executive director.~~]

[~~(d) Term limits. Term Limits for registrations or permits shall not exceed five years.~~]

(d) [~~(e)~~] Authorization. No person may cause, suffer, allow, or permit any activity of land application for beneficial use of sewage sludge unless such activity has received the prior written authorization of the commission.

[~~(f) Permit application fees for Class B sewage sludge.~~]

[~~(1) Any person who applies for a permit, permit renewal, permit modification, permit amendment, or permit transfer shall pay a permit application fee. The fees in this subsection supercede the fees in §305.53 of this title (relating to Application Fee). The commission shall not consider an application for final decision until such time as the permit application fee is paid. All permit application fees must be made payable to the Texas Commission on Environmental Quality and paid at the time the application for a permit is submitted.~~]

[~~(2) The executive director shall not process an application until all delinquent annual fees and delinquent administrative penalties owed the commission by the applicant or for the site as delineated in the permit application are paid in full. Any permittee to whom a permit is transferred shall be liable for payment of the annual fees assessed for the permitted entity/site on the same basis as the transferor of the permit, as well as any outstanding fees and associated penalties owed the commission. If the applicant is not the permittee at the time fees become delinquent or against whom administrative penalties are assessed, the executive director may for good cause waive the applicant's liability under this section for payment of delinquent annual fees or delinquent administrative penalties.~~]

[~~(3) An applicant may file a written request for a refund in the amount of 50% of the permit application fee paid if the permit is not issued. No fees shall be refunded after a permit, permit renewal, permit modification, permit amendment, or permit transfer has been issued by the commission. Transfer of a permit shall not entitle the transferor permittee to a refund, in whole or part, of any fee already paid by that permittee.~~]

[~~(4) The permit application fees shall be between $1,000 and $5,000, based on the quantity of sewage sludge to be applied annually under the permit, as shown in the following schedule:~~]

[~~(A) $1,000 if the quantity is 2,000 dry tons or less;~~]

[~~(B) $2,000 if the quantity is greater than 2,000 dry tons but less than or equal to 5,000 dry tons;~~]

[~~(C) $3,000 if the quantity is greater than 5,000 dry tons but less than or equal to 10,000 dry tons;~~]

[~~(D) $4,000 if the quantity is greater than 10,000 dry tons but less than or equal to 20,000 dry tons; or~~]

[~~(E) $5,000 if the quantity is greater than 20,000 dry tons.~~]

§312.8. General Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise .

(1) 25-year, 24-hour rainfall event--The rainfall event with a recurrence interval of once in 25 years, with a duration of 24 hours as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed from it [~~therefrom~~].

(2) (No change.)

(3) Aerobic digestion--The biochemical decomposition of organic matter in sewage sludge into carbon dioxide, water, and other by-products by microorganisms in the presence of free oxygen.

(4) (No change.)

(5) Agricultural management unit [~~Management Unit (AMU)~~]--A portion of a land application area contained within an identifiable boundary, such as a river, fence, or road, where the area has a known crop or land use history.

(6) (No change.)

(7) Anaerobic digestion--The biochemical decomposition of organic matter in sewage sludge into methane gas, carbon dioxide, and other by-products by microorganisms in the absence of free oxygen.

(8) - (9) (No change.)

(10) Applied uniformly--Sewage sludge placed on the land for beneficial use such that the agronomic rate is not exceeded anywhere in the application area.

(11) [~~(10)~~] Apply sewage sludge or sewage sludge applied to the land--Land application or the spraying/spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil.

(12) [~~(11)~~] Aquifer--A geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

(13) [~~(12)~~] Base flood--A flood that has a 1% chance of occurring in any given year.

(14) [~~(13)~~] Beneficial use--Placement of sewage sludge onto land in a manner that [~~which~~] complies with the requirements of Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites), and does not exceed the agronomic need or rate for a cover crop, or any metal or toxic constituent limitations that [~~which~~] the cover crop may have. Placement of sewage sludge on the land at a rate below the optimal agronomic rate will be considered a beneficial use.

(15) [~~(14)~~] Bulk sewage sludge--Sewage sludge that is not sold or given away in a bag or other container for application to the land.

~~[(15) CFR--Code of Federal Regulations.]~~

(16) Certified nutrient management specialist--An organization in Texas or an individual who is currently certified as a nutrient management specialist through a United States Department of Agriculture-Natural Resources Conservation Service recognized certification program.

(17) [~~(16)~~] Class A sewage sludge--Sewage sludge meeting one of the pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction).

(18) [~~(17)~~] Class B sewage sludge--Sewage sludge meeting one of the pathogen reduction requirements in §312.82(b) of this title.

(19) [~~(18)~~] Contaminate an aquifer--To introduce a substance that causes the maximum contaminant level for nitrate in 40 Code of Federal Regulations (CFR) §141.11, as amended, to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater already exceeds the maximum contaminate level for nitrate in 40 CFR §141.11, as amended.

(20) [~~(19)~~] Cover--Soil or other material used to cover sewage sludge placed on an active sludge unit.

(21) [~~(20)~~] Cover crop--Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

(22) [~~(21)~~] Cumulative metal loading rate--The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a unit area of land.

(23) [~~(22)~~] Density of microorganisms--The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge.

(24) [~~(23)~~] Displacement--The relative movement of any two sides of a fault measured in any direction.

(25) [~~(24)~~] Disposal--The placement of sewage sludge on the land for any purpose other than beneficial use. Disposal does [~~shall~~] not include placement onto the land where the activity has been approved by the executive director or commission as storage or temporary storage and it occurs only for the period of time expressly approved.

(26) [~~(25)~~] Domestic septage--Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap.

(27) [~~(26)~~] Domestic sewage--Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

(28) [~~(27)~~] Dry weight basis--Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

(29) [~~(28)~~] Experimental use--Non-routine beneficial use land application or reclamation projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects.

(30) [~~(29)~~] Facility--Includes all contiguous land, structures, other appurtenances, and improvements on the land used for the surface disposal, land application for beneficial use, or incineration of sewage sludge.

(31) [~~(30)~~] Fault--A fracture or zone of fractures in any materials along which strata, rocks, or soils on one side are displaced with respect to strata, rocks, or soil on the other side.

(32) [~~(31)~~] Feed crops--Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, or poultry.

(33) [~~(32)~~] Fiber crops--Crops such as flax and cotton.

(34) [~~(33)~~] Final cover--The last layer of soil or other material placed on a sludge unit at closure.

(35) [~~(34)~~] Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot.

(36) [~~(35)~~] Food crops--Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

(37) [~~(36)~~] Forest--Land densely vegetated with trees and/or underbrush.

(38) [~~(37)~~] Grit trap--A unit/chamber that allows for the sedimentation of solids from an influent liquid stream by reducing the flow velocity of the influent liquid stream. In a grit trap, the inlet and the outlet are both located at the same vertical level, at, or very near, the top of the unit/chamber; the outlet of the grit trap is connected to a sanitary sewer system. A grit trap is not designed to separate oil and water.

(39) [~~(38)~~] Grit trap waste--Waste collected in a grit trap. Grit trap waste includes waste from grit traps placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments. The term does not include material collected in an oil/water separator or in any other similar waste management unit designed to collect oil.

(40) [~~(39)~~] Groundwater--Water below the land surface in the saturated zone.

(41) Harvesting--Any act of cutting, picking, drying, baling, gathering, and/or removing vegetation from a field, or storing.

(42) [~~(40)~~] Holocene time--The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

(43) Incorporation--Mixing the applied material evenly through the top three inches of soil.

(44) [~~(41)~~] Industrial wastewater--Wastewater generated in a commercial or industrial process.

(45) [~~(42)~~] Institution--An established organization or corporation, especially of a public nature or where the public has access, such as child care facilities, public buildings, or health care facilities.

(46) [~~(43)~~] Land application--The spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

(47) [~~(44)~~] Land with a high potential for public exposure--Land that the public uses frequently and/or is not provided with a means of restricting public access.

(48) [~~(45)~~] Land with a low potential for public exposure--Land that the public uses infrequently and/or is provided with a means of restricting public access.

(49) [~~(46)~~] Leachate collection system--A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sludge unit.

(50) [~~(47)~~] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(51) [~~(48)~~] Liner--Soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less. Soil liners must [~~shall~~] be of suitable material with more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, a plasticity index greater than 15, compaction of greater than 95% Standard Proctor at optimum moisture content, and will be at least two feet thick placed in six-inch lifts. Synthetic liners must [~~shall~~] be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(52) [~~(49)~~] Lower explosive limit for methane gas--The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

(53) Major sole-source impairment zone--A watershed that contains a reservoir that is used by a municipality as a sole source of surface drinking water supply for a population of more that 140,000, inside and outside of its municipal boundaries; and into which at least half of the water flowing is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended, at least in part because of the concerns regarding pathogens and phosphorus, and for which the commission at some time prepared and submitted a total maximum daily load standard.

(54) [~~(50)~~] Metal limit--A numerical value that describes the amount of a metal allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

(55) [~~(51)~~] Monofill--A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(56) [~~(52)~~] Municipality--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency under Clean Water Act, §208, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in Clean Water Act, §201(e), as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(57) [~~(53)~~] Off-site--Property that [~~which~~] cannot be characterized as "on-site."

(58) [~~(54)~~] On-site--The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private right-of-way, the access must [~~shall~~] be by crossing the right-of-way or the right-of-way must [~~shall~~] be under the control of the person.

(59) [~~(55)~~] Operator--The person responsible for the overall operation of a facility or beneficial use site.

(60) [~~(56)~~] Other container--Either an open or closed receptacle, including, but not limited to, a bucket, box, or a vehicle or trailer with a load capacity of one metric ton (2,200 pounds) or less.

(61) [~~(57)~~] Owner--The person who owns a facility or part of a facility.

(62) [~~(58)~~] Pasture--Land that [~~on which~~] animals feed directly on for feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(63) [~~(59)~~] Pathogenic organisms--Disease-causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(64) [~~(60)~~] Person who prepares sewage sludge--Either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

(65) [~~(61)~~] Place sewage sludge or sewage sludge placed--Disposal of sewage sludge on a surface disposal site.

(66) [~~(62)~~] Pollutant--An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

(67) [~~(63)~~] Process or processing--For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment."

(68) [~~(64)~~] Public contact site--Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and/or golf courses.

(69) [~~(65)~~] Range land--Open land with indigenous vegetation.

(70) [~~(66)~~] Reclamation site--Drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and\or construction sites.

(71) [~~(67)~~] Runoff--Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

(72) [~~(68)~~] Seismic impact zone--An area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

(73) [~~(69)~~] Sewage sludge--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during preliminary treatment of domestic sewage in a treatment works.

(74) [~~(70)~~] Sewage sludge debris--Solid material such as rubber, plastic, glass, or other trash that [~~which~~] may pass through a wastewater treatment process or sludge process or may be collected with septage. This solid material is visibly distinguishable from sewage sludge. This material does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works, nor does it include grit trap waste.

(75) [~~(71)~~] Sludge lagoon--An existing surface impoundment located on site [~~on-site~~] at a wastewater treatment plant for the storage of sewage sludge. Any other type impoundment must [~~shall~~] be considered an active sludge unit, as defined in this section.

(76) [~~(72)~~] Sludge unit--Land that [~~on which~~] only sewage sludge is placed for disposal. A sludge unit must [~~shall~~] be used for sewage sludge. This does not include land that [~~on which~~] sewage sludge is either stored or treated.

(77) [~~(73)~~] Sludge unit boundary--The outermost perimeter of a surface disposal site.

(78) Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in §307.10 of this title (relating to Appendices A - E) and is the sole source of supply of a public water supply system, exclusive of emergency water connections.

(79) [~~(74)~~] Source separated yard waste--For purposes of this chapter, shall have the same meaning [~~definition~~] as found in Chapter 332 of this title (relating to Composting).

(80) [~~(75)~~] Specific oxygen uptake rate [~~(SOUR)~~]--The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

(81) [~~(76)~~] Staging--Temporary holding of sewage sludge at a beneficial use site, for up to a maximum of seven calendar days, prior to the land application of the sewage sludge.

(82) [~~(77)~~] Store or storage--The placement of sewage sludge on land for longer than seven days.

(83) [~~(78)~~] Temporary storage--Storage of waste regulated under this chapter by a transporter, which has been approved in writing by the executive director, in accordance with §312.147 of this title (relating to Temporary Storage).

(84) [~~(79)~~] Three hundred-sixty-five day period--A running total that [~~which~~] covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(85) [~~(80)~~] Total solids--The materials in sewage sludge that remain as residue if the sewage sludge is dried at 103 degrees Celsius to 105 degrees Celsius.

(86) [~~(81)~~] Transporter--Any person who collects, conveys, or transports sewage sludge, water treatment plant sludges, grit trap waste, grease trap waste, chemical toilet waste, and/or septage by roadway, ship, rail, or other means.

(87) [~~(82)~~] Treat or treatment of sewage sludge--The preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

(88) [~~(83)~~] Treatment works--Either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

(89) [~~(84)~~] Unstabilized solids--Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(90) [~~(85)~~] Unstable area--Land subject to natural or human induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land that [~~on which~~] the soils are subject to mass movement.

(91) [~~(86)~~] Vector attraction--The characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(92) [~~(87)~~] Volatile solids--The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess oxygen.

(93) [~~(88)~~] Water treatment sludge--Sludge generated during the treatment of either surface water or groundwater for potable use, which is not an industrial solid waste as defined in §335.1 of this title (relating to Definitions).

(94) [~~(89)~~] Wetlands--Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§312.9. Sludge Fee Program.

(a) The following words and terms, when used in this section, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Annual fee--A fee charged to each person holding a registration or permit under [~~pursuant to~~] the commission's authority in [~~the~~] Texas Health and Safety Code, Chapter 361, or a permit issued under [~~pursuant to~~] the commission's authority in [~~the~~] Texas Water Code, Chapter 26, except that a fee will not be assessed under this chapter as specified in §312.5 of this title (relating to Relationship to Other Requirements).

(2) Reported--Information compiled and submitted to the commission that tracks the amount of waste being stored, treated, processed, transported, or disposed of in the state; [~~,~~] tracks the amount of processing, transporting, and disposal capacity and reserve capacity; [~~,~~] and enables equitable assessment and collection of fees.

(3) (No change.)

(b) Except as provided in subsection (f) of this section, the amount of the annual fee that [~~which~~] is assessed is determined by weight of solids disposed of and reported to the commission as of September 30 [~~1~~], of each year. Failure to report the disposal of sewage sludge or water treatment sludge does not exempt a registrant or permittee [~~permitted~~] from this fee. The fees are [~~shall be~~] as follows.

(1) (No change.)

(2) When water treatment sludge is mixed with a Class B sewage sludge or when sewage sludge that is classified as Class B is applied to the land for beneficial use as described in Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites) the fee is [~~shall be~~] $0.75 per dry ton.

(3) When sewage sludge or water treatment sludge is applied to a site for disposal and the disposal was authorized by the commission or predecessor agency prior to [~~the~~] October 1, 1995, the fee is [~~shall be~~] $1.25 per dry ton.

(4) When sewage sludge is applied to a site for disposal or when water treatment sludge is applied to a site for disposal and the activity requires a permit as specified in Subchapter F of this chapter (relating to Disposal of Water Treatment Sludge), and the disposal is authorized by the commission or predecessor agency on October 1, 1995, or thereafter, the fee is [~~shall be~~] $1.25 per ton.

(5) When water treatment sludge is applied to a site for disposal and the activity does not require a permit as specified in Subchapter F of this chapter, the fee is [~~shall be~~] $0.20 per dry ton.

(6) When sewage sludge is fired in a sewage sludge incinerator as described in Subchapter E of this chapter (relating to Guidelines and [~~And~~] Standards for Sludge Incineration), the fee is [~~shall be~~] $1.25 per dry ton.

(c) An annual transporter fee is assessed against each person or entity holding a registration to transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grease trap waste, or grit trap waste issued in accordance with in Subchapter G of this chapter (relating to Transporters and Temporary Storage Provisions). The amount of the annual fee must [~~shall~~] be based upon the total annual volume of waste transported by the transporter under each registration and reported to the commission as of June 15, each year. Failure to report the transportation of waste does not exempt a registrant from this fee. The fees are [~~shall be~~] as follows.

(1) For a total annual volume transported of 10,000 gallons (50 cubic yards) or less, the fee is $100.

(2) - (3) (No change.)

(4) For a total annual volume transported of greater than 200,000 gallons (1,000 cubic yards), the fee is $500.

(d) Sludge permit and registration holders shall submit the annual reports in accordance with §312.48(1) of this title (relating to Reporting) no later than September 30 of each calendar year, for a reporting period covering September 1 of the previous calendar year to August 31 of the current calendar year. Fees assessed in subsection (b) of this section must [~~shall~~] be paid[~~,~~] by the registrant or permittee on or before the due date specified in the invoice [~~after being billed by the executive director, prior to October 1, of~~] each year. Fees assessed in subsection (c) of this section must [~~shall~~] be paid by the registrant after billing by the executive director, prior to September 1, of each year. Fees must [~~shall~~] be paid by check, certified check, or money order payable to the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission (TNRCC)~~]. The permittee or registrant of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(e) Failure of the registrant or permittee to submit the required fee [~~payment~~] within 30 days of billing, shall be sufficient cause for the commission to revoke the registration or permit and authorization to process or dispose of waste. Any entity to whom a registration or permit is transferred shall be liable for payment of the annual fee on the same basis as the transferor.

(f) No fee will be assessed for sewage sludge or water treatment sludge composted with source-separated [~~source separated~~] yard waste at a composting facility, including a composting facility located at a permitted landfill site. This subsection does not apply if the sludge [~~it~~] is not used as compost and is deposited in a surface disposal site or landfill.

(g) Sludge permit holders shall submit permit application fees for Class B sewage sludge.

(1) Any person who applies for a new permit, permit renewal, or permit amendment shall pay a permit application fee. The fees in this subsection relating to application for a permit, permit renewal, or major amendment supercede the fees in §305.53 of this title (relating to Application Fee). An application for a minor amendment or permit transfer must be submitted in accordance with §305.53 of this title. The commission may not consider an application for final decision until such time as the permit application fee is paid. All permit application fees must be made payable to the commission and paid at the time the application for a permit is submitted.

(2) The executive director may not process an application until all delinquent annual fees and delinquent administrative penalties owed the commission by the applicant or for the site as delineated in the permit application are paid in full. Any permittee to whom a permit is transferred shall be liable for payment of the annual fees assessed for the permitted entity/site on the same basis as the transferor of the permit, as well as any outstanding fees and associated penalties owed the commission. If the applicant is not the permittee at the time fees become delinquent or against whom administrative penalties are assessed, the executive director may for good cause waive the applicant's liability under this subsection for payment of delinquent annual fees or delinquent administrative penalties.

(3) An applicant may file a written request for a refund in the amount of 50% of the permit application fee paid if the permit is not issued. No fees will be refunded after a new permit, permit renewal, permit modification, permit amendment, or permit transfer has been

issued by the commission. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or part, of any fee already paid by that permittee.

(4) The permit application fees will be between $1,000 and $5,000, based on the quantity of sewage sludge to be applied annually under the permit, as shown in the following schedule:

(A) $1,000, if the quantity is 2,000 dry tons or less;

(B) $2,000, if the quantity is greater than 2,000 dry tons but less than or equal to 5,000 dry tons;

(C) $3,000, if the quantity is greater than 5,000 dry tons but less than or equal to 10,000 dry tons;

(D) $4,000, if the quantity is greater than 10,000 dry tons but less than or equal to 20,000 dry tons; or

(E) $5,000, if the quantity is greater than 20,000 dry tons.

§312.10. Permit and Registration Applications Processing.

(a) (No change.)

(b) Permit and registration applications must include all information required by [~~required information shown in~~] §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registration of Land Application Activities), or §312.142 of this title (relating to Transporter Registration [~~Registrations~~]).

(c) Upon receipt of an application for a permit or registration, excluding [~~not to include~~] transportation registrations, the executive director shall assign the application a number for identification purposes, and prepare a Notice of Receipt of Application and Declaration of Administrative Completeness for domestic septage registrations or Notice of Receipt of Application and Intent to Obtain Permit for permits where applicable, [~~statement of the receipt of the application and declaration of administrative completeness~~] which is suitable for publishing or mailing, and forward that notice [~~statement~~] to the Office of the Chief Clerk [~~chief clerk~~]. The Office of the Chief Clerk [~~chief clerk~~] shall notify every person entitled to notification of a particular application as described in §312.13 of this title (relating to Actions and Notice).

(d) The Notice of Receipt of Application and Declaration of Administrative Completeness for domestic septage registrations or Notice of Receipt of Application and Intent to Obtain Permit for permit where applicable, must [~~notice of receipt of an application for permit or registration and declaration of administrative completeness shall~~] contain the information required by [~~in~~] Chapter 39 of this title (relating to Public Notice), Texas Water Code, §5.552(c), and the approximate anticipated date of the first land application of sludge to the proposed land application unit.

(e) Nothing in this section shall be construed so as to waive the notice and processing requirements concerning the application and the draft permit in accordance with Chapter 39, Subchapters H and J of this title (relating to Applicability and General Provisions and Public Notice of Water Quality Applications and Water Quality Management Plans [~~Public Notice~~]), Chapter 50, Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director [~~Action on Applications and Other Authorizations~~]), Chapter 55, Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or [~~and~~] Contested Case Hearing [~~Hearings; Public Comment~~]), or Chapter 305, Subchapters C, D, and F of this title (relating to Application for Permit or Post-Closure; Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits; and Permit Characteristics and Conditions [~~Consolidated Permits~~]) for applications for sewage sludge land application, processing, disposal, storage, or incineration permits.

(f) All permit applications [~~Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit~~] for sewage sludge land application, processing, disposal, storage, or incineration are [~~is~~] subject to the application processing procedures and requirements [~~found~~] in §§281.18 - 281.24 of this title (relating to Applications Returned; Technical Review; Extension [~~Extensions~~]; Draft Permit, Technical Summary, Fact Sheet, and Compliance History [~~Summary~~]; Referral to Commission; Application Amendment; and Effect of Rules).

(g) All registration applications for Class A sludge, water treatment plant sludge, and domestic septage are subject to the application processing procedures and requirements in §§281.18 - 281.20 of this title. [~~Any person who is required to obtain a registration, or who requests an amendment, modification, or renewal of a registration to land apply sewage sludge (including domestic septage) is subject to the application processing procedures and requirements found in §§281.18 - 281.20 of this title. If a permit application for land application of Class B sewage sludge is filed for a site holding a current registration before the expiration of the registration, the registration will remain in effect until either the permit is issued or denied, or until August 31, 2003, whichever occurs first.~~]

(h) A registration or permit will [~~The registration for land application of sewage sludge shall~~] be cancelled upon receipt of a written request for cancellation from either the site operator or landowner. The executive director will provide notice to the other party that cancellation has been requested and that cancellation will occur ten days from the issuance of notice. This notice is provided merely as a courtesy by the commission and is not mandatory for cancellation.

(i) To [~~In order to~~] transfer a registration or permit [~~for land application of sewage sludge~~], both the site operator and the landowner must sign the transfer application. An application for transfer that is not signed by both the site operator and the landowner will be considered a request for cancellation.

(j) (No change.)

(k) For permits, a major amendment is defined in Chapter 305, Subchapter D of this title. For purposes of this chapter concerning registrations and except as provided in subsection (l) of this section, a major amendment for a registration is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a registration or a substantive change in the information provided in an application for registration [~~regarding sewage sludge~~]. Changes to registrations that [~~which~~] are not considered major include, but are not limited to, typographical errors, changes that [~~which~~] result in more stringent monitoring requirements, changes in site ownership, changes in site operator, or similar administrative information.

(l) Upon the effective date of this chapter, the executive director will process as a minor amendment a request by an existing permittee or registrant to change any substantive term, provision, requirement, or a limiting parameter in a permit or registration that [~~which~~] implemented prior regulations of the commission, when it is no longer a requirement of this chapter. Notice requirements of §312.13 of this title are not applicable to a minor amendment for a registration.

(m) Term limits for registrations or permits may not exceed five years.

§312.11. Permits.

(a) The provisions of this section set the standards and requirements for permit applications to land apply, process, store, dispose of, or incinerate sewage sludge. Any information provided under this subsection must be submitted in quadruplicate form.

(b) Any person who is required to obtain or who requests a new permit or an amendment, modification, or renewal of a permit under this section is subject to the permit application procedures of §1.5(d) of this title (relating to Records of the Agency), §305.42(a) of this title (relating to Application Required), §305.43 of this title (relating to Who Applies), §305.44 of this title (relating to Signatories to Applications), §305.45 of this title (relating to Contents of Application for Permit), and §305.47 of this title (relating to Retention of Application Data). For a land application permit, the applicant must be:

(1) the owner of the application site, if the sewage sludge was generated outside this state; or

(2) the site operator, if the sewage sludge was generated in this state.

(c) A permit application must include all information in accordance with Chapter 281, Subchapter A of this title (relating to Applications Processing) and Chapter 305, Subchapter C of this title (relating to Application for Permit or Post-Closure Order), and must also include the following:

(1) the map required by §305.45(a)(6) of this title that provides the following information:

(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;

(B) the name and mailing address of the owner of each tract of land located:

(i) within 1/4 mile of the site to be permitted, as such information can be determined from the current county tax rolls at the time the application is filed, or other reliable sources, for Class B sewage sludge beneficial land use permit applications submitted on or after September 1, 2003, or applications submitted before September 1, 2003, but not administratively complete by the commission by that date;

(ii) within 1/2 mile of the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources, for a sewage sludge incineration or disposal permit application; and

(iii) adjacent to the site to be permitted, as such information can be determined from the current county tax rolls at the time the application is filed, or other reliable sources, application for a domestic septage or Class A sewage sludge beneficial use land application, or sewage sludge processing or storage facility;

(C) the source(s) of the information for the surrounding property owners; and

(D) the list of property owners. The list must be provided both as a hard copy, either on the map or as an attached list, and in electronic format or on four sets of self-adhesive mailing labels; and

(2) a notarized affidavit from the applicant(s) verifying land ownership of the permitted site or landowner agreement to the proposed activity.

~~[(c) An application for a permit must include all information in accordance with Chapter 281, Subchapter A of this title (relating to Application Processing) and Chapter 305, Subchapter C of this title (relating to Application for Permit), and must also include the following.]~~

~~[(1) for an incineration or disposal facility, the map required by §305.45(a)(6) of this title must provide the following information:]~~

~~[(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;]~~

~~[(B) the name and mailing address of the owner of each tract of land within one-half mile of any portion of the tract of land where the permitted activities would occur, as such information can be determined from the current county tax rolls or other reliable sources;]~~

~~[(C) the source(s) of the information on the surrounding property owners; and]~~

~~[(D) the list of property owners must be provided both as a hard copy, either on the map or as an attached list, and in one of the following manners:]~~

~~*[(i)* in electronic format; or]~~

~~*[(ii)* on four sets of self-adhesive mailing labels for all property owners;]~~

~~[(2) for beneficial use land application, processing, or storage facility, the map required by §305.45(a)(6) of this title must provide the following information:]~~

~~[(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;]~~

~~[(B) the name and mailing address of the owner of each tract of land adjacent to the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources;]~~

~~[(C) the source(s) of the information on the surrounding property owners; and]~~

~~[(D) the list of property owners in both a hard copy, either on the map or as an attached list, and in one of the following manners:]~~

~~*[(i)* in electronic format; or]~~

~~*[(ii)* on four sets of self-adhesive mailing labels for all property owners;]~~

~~[(3) a notarized affidavit from the applicant(s) verifying land ownership of the permitted site or landowner agreement to the proposed activity; and]~~

~~[(4) any information provided under this subsection must be submitted in quadruplicate form.]~~

(d) A permit application for land application of [~~An applicant for a permit to land apply~~] Class B sewage sludge must also include [~~provide~~] the following information:

(1) the information listed in §312.12(b)(1)(A) - (C) of this title (relating to Registration [~~Land Application Activities~~]);

(2) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), based on the following:

(A) [~~the~~] samples [~~must be~~] taken from the zero to six-inch [~~six inch~~] zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) [~~the~~] soil samples that [~~must~~] accurately show soil conditions in the application area(s) and that are [~~must be~~] taken at a

spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples [~~must be~~] comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample [~~must be~~] taken from each United States Department of Agriculture (USDA) Natural Resources [~~Resource~~] Conservation Service (NRCS) soil type (soils with the same characterization or texture), unless an alternate method is used; and

[~~(E) an alternate method for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and~~]

(E) [~~(F)~~] when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan [~~must also be~~] included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS [~~Natural Resource Conservation Service~~] soil type in each area sampled;

(3) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), based on the following:

(A) separate samples [~~must be~~] taken from the zero to six-inch [~~six inch~~] and from the six to 24-inch [~~24 inch~~] zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) [~~the~~] soil samples that [~~must~~] accurately show soil conditions in the application area(s) and that are [~~must be~~] taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples [~~must be~~] comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample [~~must be~~] taken from each USDA NRCS [~~Natural Resource Conservation Service~~] soil type (soils with the same characterization or texture), unless an alternate method is used;

[~~(E) alternate methods for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and~~]

(E) [~~(F)~~] when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan [~~must~~] also [~~be~~] included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(4) information necessary to identify the hydrological characteristics of the surface water and groundwater within 1/4 [~~one-quarter~~] mile of the site to be permitted; [~~and~~]

(5) proof of a commercial liability insurance policy and an environmental impairment policy or a similar policy in accordance with Chapter 37, Subchapter V of this title (relating to Financial Assurance for Class B Sewage Sludge for Land Application Units), except political subdivisions; and

(6) proof that the applicant has minimized the risk of water quality impairment caused by nitrogen applied to the land application unit through the application of Class B sludge by having had a nutrient management plan prepared by a certified nutrient management specialist in accordance with the NRCS Practice Standard Code 590.

[~~(5) any information under this subsection shall be submitted in quadruplicate form.~~]

(e) A permittee of a Class B sewage sludge land application site shall comply with all the requirements of Chapter 37, Subchapter V of this title.

(f) [~~(e)~~] Any person who is issued a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the permit characteristics and standards set forth in §305.122 of this title (relating to Characteristics of Permits), §305.123 of this title (relating to Reservation in Granting Permit), §305.124 of this title (relating to Acceptance of Permit, Effect), §305.125 of this title (relating to Standard Permit Conditions), §305.126(d) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits), §305.127 of this title (relating to Conditions to be Determined for Individual Permits), §305.128 of this title (relating to Signatories to Reports), and §305.129 of this title (relating to Variance Procedures).

(g) [~~(f)~~] If any provision of a permit is violated during its term, the permit holder is required to report to the executive director the noncompliance in accordance with Texas Health and Safety Code, §361.121(d)(5) and §305.125(9) of this title. Each permit for the land application of sewage sludge must contain a provision requiring such reporting. Report of such information must [~~shall~~] be provided orally or by facsimile transmission (fax) to the appropriate regional office [~~Regional Office~~] within 24 hours of the permit holder becoming aware of the noncompliance. A written submission of such information must [~~shall~~] also be provided by the permit holder to the regional office [~~Regional Office~~] and to the Enforcement Division at the commission's Central Office (MC 149) within five working days of becoming aware of the noncompliance. The written submission must contain the following information:

(1) a description of the noncompliance and its cause;

(2) the potential danger to human health, safety, or the environment;

(3) the period of noncompliance, including exact dates and times;

(4) if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(5) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(h) [~~(g)~~] Each sewage sludge land application permit must include a reference to the maximum quantity of sewage sludge that may be land applied under the permit.

(i) [~~(h)~~] Any permittee who requests a new permit or an amendment, modification, or renewal of a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, denials, and suspensions of permits, as set forth in §305.62 of this title (relating to Amendment), §305.63 of this title (relating to Renewal), §305.64 of this title (related to Transfer of Permits), §305.65 of this title (relating to Renewal [~~Corrections of Permits~~]), §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), §305.67 of this title (relating to Revocation and Suspension upon Request or Consent), and §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension). [~~The permittee shall have the continuing obligation to provide immediate written notice to the executive director of any changes to a permit or to~~

~~information on soil or subsurface conditions at the site, and to provide any additional information concerning changes in land ownership, site control, operator, waste composition, source of sewage sludge, or waste management methods. Information submitted under this subsection shall be in quadruplicate form.~~]

(j) The permittee shall immediately provide written notice to the executive director of any changes to a permit or to information on soil or subsurface conditions at the site, and provide any additional information concerning changes in land ownership, site control, operator, waste composition, source of sewage sludge, or waste management methods.

(k) For land application sites located in a major sole-source impairment zone, the permittee shall be subject to the following provisions.

(1) The operator shall have a nutrient management plan (nitrogen and phosphorus) prepared by a certified nutrient management specialist in accordance with the USDA-NRCS Practice Standard Code 590;

(2) When results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 parts per million of extractable phosphorus (reported as P) in the zero - six-inch sample for a particular land application field or if ordered by the commission in order to protect the quality of water in the state, then the operator may not apply any sewage sludge to the affected area unless the land application is implemented in accordance with a detailed nutrient utilization plan (NUP) that has been approved by the commission.

(3) A NUP is equivalent to the NRCS Nutrient Management Plan Practice Standard Code 590. The nutrient management plan, based on crop removal, must be developed and certified by one of the following individuals or entities:

(A) an employee of the NRCS;

(B) a nutrient management specialist certified by the NRCS;

(C) the Texas State Soil and Water Conservation Board;

(D) Texas Cooperative Extension;

(E) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas;

(F) a professional agronomist certified by the American Society of Agronomy;

(G) a certified professional soil scientist certified by the Soil Science Society of America; or

(H) a licensed Texas geoscientist-soil scientist, after approval by the executive director based on a determination by the executive director that another person or entity identified in this paragraph cannot develop the plan in a timely manner.

(4) After a NUP is implemented, the operator shall land apply in accordance with the NUP until soil phosphorus is reduced below the critical phosphorus level. Thereafter, the operator shall implement the requirements of the nutrient management plan.

(5) The buffer zones must be maintained according to the applicable requirements specified in §312.44(c) of this title (relating to Management Practices).

§312.12. Registrations [~~Registration of Land Application Activities~~].

(a) (No change.)

(b) Except as provided in §312.4(b) of this title (relating to Required Authorizations or Notifications [~~Requirements for Sewage Sludge Permit, Registration, or Notification~~]), an applicant for a registration to land apply Class A sludge, water treatment sludge, and/or domestic septage [~~and §312.11 of this title (relating to Permits), any person who intends to land apply sewage sludge for beneficial use~~] shall:

(1) submit to the executive director an original, completed application form approved by the executive director, along with the appropriate number of copies of the registration application. Each applicant shall submit to the executive director such information as may reasonably be required to enable the executive director to determine whether such land application for beneficial use activities are compliant with the terms of this chapter. Such information may include, but is not limited to, the following:

(A) a description and composition of the material to be land applied [~~sewage sludge~~];

(B) a description of all processes generating the material [~~sewage sludge (including domestic septage)~~] to be land applied at the site;

(C) information about the site and the planned management of the material to be land applied [~~sewage sludge~~], including the name, address, and telephone number of any landowner or operator at the site and the following information:

(i) whether such material is managed on site [~~on-site~~] and/or off site [~~off-site~~] from its point of generation;

(ii) (No change.)

(iii) a listing of the types of material to be land applied [~~sewage sludge~~] managed in each unit or tract;

(iv) a detailed description of the beneficial use occurring at each unit or tract of land where application of Class A sludge, water treatment sludge, and/or domestic septage [~~sewage sludge~~] is proposed, including proposed waste management and crop production methods; and

(v) (No change.)

(D) (No change.)

(E) the notarized signature of each applicant, [~~checked against commission requirements~~] in accordance with §305.44 of this title (relating to Signatories to Applications);

(F) - (G) (No change.)

(H) for applications for major amendments or new registrations, information concerning surrounding landowners, including the following, as applicable:

(i) (No change.)

(ii) a list on or attached to the map of the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls at the time the application is filed, and other reliable sources. [~~;~~] The list of property owners must be provided in both hard copy and either in electronic format or on four sets of self-adhesive mailing labels; and

(iii) the source of the information; [~~and~~]

~~[(iv)~~ ~~the list of property owners in both a hard copy and in one of the following manners:~~]

~~[(I)~~ ~~in electronic format; or~~]

~~[(II)~~ ~~on four sets of self-adhesive mailing labels for all property owners;~~]

(I) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), as applicable, based on the following:

(i) [~~the~~] samples [~~must be~~] taken from the zero to six-inch [~~six inch~~] zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(ii) [~~the~~] soil samples that [~~must~~] accurately show soil conditions in the application area(s) and that are [~~must be~~] taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(iii) composite samples [~~must be~~] comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(iv) a separate composite sample [~~must be~~] taken from each United States Department of Agriculture (USDA)-Natural [~~USDA Natural~~] Resource Conservation Service (NRCS) soil type (soils with the same characterization or texture), unless an alternate method is used;

~~*(v)* an alternate method for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and~~

(v) [~~(vi)~~] when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan [~~must~~] also [~~be~~] included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS [~~Natural Resource Conservation Service~~] soil type in each area sampled;

(J) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), as applicable, based on the following:

(i) separate samples [~~must be~~] taken from the zero to six-inch [~~six inch~~] and from the six to 24-inch [~~24 inch~~] zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(ii) [~~the~~] soil samples that [~~must~~] accurately show soil conditions in the application area(s) and that are [~~must be~~] taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(iii) composite samples [~~shall be~~] comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(iv) a separate composite sample [~~must be~~] taken from each USDA NRCS [~~Natural Resource Conservation Service~~] soil type (soils with the same characterization or texture), unless an alternate method is used;

~~*(v)* an alternate method for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and~~

(v) [~~(vi)~~] when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan [~~must~~] also [~~be~~] included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(K) any information provided under this paragraph [~~must be~~] submitted to the executive director in quadruplicate form; [~~.~~]

(2) [~~have the continuing obligation to~~] immediately provide written notice to the executive director of any changes, requests for an amendment, modification, or renewal of a registration, or any additional information concerning changes in land ownership, changes in site control, or operator, changes in waste composition, changes in the source of sewage sludge, or waste management methods, and information regarding soils and subsurface conditions where the operation is to be located. Any information provided under this paragraph must [~~shall~~] be submitted to the executive director in duplicate form.

(c) The executive director shall determine, after review of any application [~~for registration to land apply sewage sludge (including domestic septage) for beneficial use~~], whether to approve or deny an application in whole or in part, deny with prejudice, suspend the authority to conduct an activity for a specified period of time, or amend or modify the proposed activity requested by the applicant. The determination of the executive director shall include review and action on any new applications or changes, renewals, and requests for major amendment of any existing application. In consideration of such an application, the executive director shall [~~will~~] consider all relevant requirements of this chapter and consider all information pertaining to those requirements received by the executive director regarding the application. The written determination on any application, including any authorization granted, shall be mailed to the applicant upon the decision of the executive director.

(d) At the same time that the executive director's decision is mailed to the applicant, notice of this decision must [~~shall~~] also be mailed to all parties who submitted written information on the application, as described in §312.13(c)(2) and (3) of this title (relating to Actions and Notice).

(e) For registered land application sites located in a major sole-source impairment zone, the registrant must comply with the provisions listed in §312.11(l) of this title (relating to Permits).

§312.13. Actions and Notice.

(a) (No change.)

(b) Permit actions.

(1) All permit applications are subject to the standards and requirements as set forth in Chapter 39 [~~of this title~~], Subchapters H - J of this title (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; and Public Notice of Water Quality Applications and Water Quality Management Plans [~~Public Notice~~]), Chapter 50 [~~of this title~~], Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director [~~Action on Applications and Other Authorizations~~]), and Chapter 55 [~~of this title~~], Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or [~~and~~] Contested Case Hearing [~~Hearings; Public Notice~~]).

(2) For disposal and incineration permit applications, notice must [~~shall~~] be provided [~~pursuant to Chapter 39 of this title~~] to all owners of properties within 1/2 [~~one-half~~] mile of the border of any portion of the tract of land where the permitted activities would occur. For beneficial use (excluding Class B sewage sludge), processing, and storage permit applications, notice must [~~shall~~] be provided [~~pursuant to Chapter 39 of this title~~] to all owners of properties adjacent to any portion of the tract of land where the permitted activities will occur. The tract of land includes all contiguous properties under the ownership or control of the applicant.

(3) For Class B sewage sludge beneficial land use permit applications:

(A) notice must be provided under Chapter 39 of this title (relating to Public Notice) and under Texas Water Code, §5.552. The notice must also contain the anticipated date of the first land application of sludge to the proposed land application unit. An applicant for a new permit, permit amendment, or permit renewal under Texas Health and Safety Code, §361.121(c), shall notify by registered or certified mail each owner of land located within 1/4 mile of the proposed land application unit who lives on that land; and

(B) an owner of the land located within 1/4 mile of the proposed land application unit who lives on the land is considered an "affected person" for purposes of Texas Water Code, §5.115, and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment).

(c) Registration actions.

(1) The public notice requirements of this subsection apply to new applications for a registration, and to applications for major amendment of a registration [~~for land application of sewage sludge (including domestic septage)~~]. The requirements of this subsection do not apply to sites where only Class A sewage sludge that has been authorized for marketing and distribution is to be land applied for beneficial use or registrations for water treatment sludge.

(2) The Office of the Chief Clerk [~~chief clerk of the commission~~] shall mail the Notice of Receipt of Application and Declaration of Administrative Completeness along with a copy of the registration application [~~,~~] to the county judge in the county where the proposed site [~~for land application of sewage sludge (including domestic septage)~~] is to be located.

(3) The Office of the Chief Clerk [~~chief clerk of the commission~~] shall mail the Notice of Receipt of Application and Declaration of Administrative Completeness to the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map.

(4) Each notice must [~~shall~~] specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the application to register the site. The notice must [~~notices shall~~] specify that the registration application has been provided to the county judge and that it is available for review by interested parties.

(5) Any application for a registration [~~to beneficially use sewage sludge (including domestic septage)~~] is subject to the standards and requirements for actions concerning amendments, modifications, transfers, and renewals of registrations, as set forth in Chapter 50, Subchapter G of this title.

(d) Public comment on registrations. A person may provide the commission with written comments on any new or major amendment applications to register a site, where applicable [~~for land application of sewage sludge (including domestic septage)~~]. The executive director shall review any written comments when they are received within 30 days of mailing the notice. The written information received will be utilized by the executive director in determining what action to take on the application for registration in accordance with[~~, pursuant to~~] §312.12(c) of this title (relating to Registrations [~~Registration of Land Application Activities~~]).

(e) Motion to overturn. The applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) to overturn the executive director's final approval or denial of an application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501283
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 239-5017

♦ ♦ ♦

SUBCHAPTER B. LAND APPLICATION FOR BENEFICIAL USE AND STORAGE AT BENEFICIAL USE SITES

30 TAC §312.44, §312.48

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission shall adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The proposed amendments implement HB 2546.

§312.44. Management Practices.

(a) Land application of bulk [~~Bulk~~] sewage sludge must [~~shall~~] not cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species [~~after application to agricultural land, forest, a public contact site, or a reclamation site~~].

(b) Bulk sewage sludge must [~~shall~~] not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the state, except as provided in a permit issued under [~~pursuant to~~] Chapter 305 of this title (relating to Consolidated Permits) or Clean Water Act, §404 [~~of the Clean Water Act ("CWA")~~].

(c) When bulk sewage sludge that does not meet Class A pathogen requirements or domestic septage is applied to agricultural land, forest, or a reclamation site, buffer zones must be established for each application area as noted in this section unless otherwise specified by the commission.

(1) Surface water:

(A) 200-foot buffer zone, if the sludge is not incorporated; for land application sites located in a major sole-source impairment zone this buffer zone must maintain a vegetative cover; or

(B) 33-foot vegetative buffer zone, if the sludge is incorporated.

(2) Other buffer zones:

(A) 150 feet, private water supply well;

(B) 500 feet, public water supply well, intake, spring or similar source, public water supply treatment plant, or public water supply elevated or ground storage tank;

(C) 200 feet, solution channel, sinkhole, or other conduit to groundwater;

(D) 750 feet, established school, institution, business, or occupied residential structure;

(E) 50 feet, public right-of-way and property boundaries; and

(F) 10 feet, irrigation conveyance canal.

[~~(c) Distance to Surface Waters.~~]

[~~(1) Unless the sewage sludge is incorporated into the soil within 48 hours of application and a vegetated's cover is established between the application area and all adjacent surface waters, bulk sewage sludge not meeting Class A pathogen requirements and applied to agricultural land, forest, or a reclamation site shall maintain a buffer zone of at least 200 feet from surface waters.~~]

[~~(2) In cases where sludge is both incorporated into the soil within 48 hours of application and a vegetated's cover is established between the application area and all adjacent surface waters, bulk sewage sludge not meeting Class A pathogen requirements and applied to agricultural land, forest, or a reclamation site shall maintain a buffer zone of at least 33 feet from surface waters.~~]

[~~(d) When bulk sewage sludge not meeting Class A pathogen requirements is applied to agricultural land, forest, or a reclamation site, the following buffer zones shall be established for each application area, unless otherwise specified by the commission:~~]

[~~(1) private water supply well, 150 feet;~~]

[~~(2) public water supply well, intake, public water supply spring or similar source, public water supply treatment plant, or public water supply elevated or ground storage tank, 500 feet;~~]

[~~(3) solution channel, sinkhole, or other conduit to groundwater, 200 feet;~~]

[~~(4) established school, institution, business, or occupied residential structure, 750 feet;~~]

[~~(5) public right of way, 50 feet;~~]

[~~(6) irrigation conveyance canal, 10 feet;~~]

[~~(7) property boundary, 50 feet;~~]

(d) [~~(e)~~] Any of the buffers established in subsection (c)(2)(D) and (E) [~~(d) (4) and (7)~~] of this section may be reduced or eliminated if an agreement to that effect is signed by the owners of the established school, institution, business, occupied residential structure, or adjacent property and this documentation is provided to the executive director prior to issuance of a permit or registration. Reductions or elimination of buffer zones in an existing permit or registration by agreement of the affected landowner will be considered a minor amendment of the permit or registration.

(e) [~~(f)~~] Bulk sewage sludge must [~~shall~~] be applied to agricultural land, forest, or a public contact site at a whole sludge application rate that is equal to or less than the agronomic rate for the agricultural land, forest, or public contact site on which the bulk sewage sludge is applied. [~~On a case-by-case basis, a whole sludge application rate may exceed the agronomic rate for a time application to a reclamation site.~~]

(f) [~~(g)~~] Bulk sewage sludge must [~~shall~~] be applied to a reclamation site at a whole application rate that is equal to or less than the agronomic rate for the reclamation site on which the bulk sewage sludge is applied, unless otherwise specified by the commission. On a case-by-case basis, a whole sludge application rate may exceed the agronomic rate for a specific time period.

(g) [~~(h)~~] Groundwater protection measures [~~Ground Water Protection Measures~~].

(1) A seasonal [~~Seasonal~~] high groundwater [~~ground water~~] table must [~~shall~~] be not less than three feet below the treatment zone for soils with moderate or slower permeability (less than two inches per hour).

(2) A seasonal [~~Seasonal~~] high groundwater [~~ground water~~] table must [~~shall~~] be not less than four feet below the treatment zone for soils with moderately rapid or rapid permeability (greater than two inches per hour and less than 20 [~~twenty~~] inches per hour).

(3) Seasonal generally refers to a groundwater [~~ground water~~] table that [~~which~~] may be perched on a less permeable soil or geologic unit and fluctuates with seasonal climatic variation or that [~~which~~] occurs in a soil or geologic unit as a variation in saturation due to seasonal climatic conditions and is identified as such in a published soil survey report or similar document.

(4) Application of sludge to land having soils with greater permeability and with higher groundwater [~~ground water~~] tables will be considered on a case-by-case basis, after consideration of soil pH, metal loadings onto the soil, soil buffering capacity, or other protective measures to prevent groundwater [~~ground water~~] contamination.

(h) [~~(i)~~] Sludge must [~~shall~~] be applied by a method and under conditions that prevent runoff of sewage sludge beyond the active application area and protect the quality of the surface water and the soils in the unsaturated zone.

(1) Sludge must [~~shall~~] be applied uniformly over the surface of the land.

(2) Sludge may [~~shall~~] not be applied to areas where permeable surface soils are less than two [~~2~~] feet thick. The executive director will consider sites with thinner permeable surface soils, on a case-by-case basis.

(3) Sewage sludge may [~~shall~~] not be applied during rainstorms or during periods in which surface soils are water-saturated.

(4) Sludge may [~~shall~~] not be applied to areas having topographical slopes in excess of 8.0%. On a case-by-case basis, the executive director will consider sites with steeper slopes when runoff controls are proposed and utilized, incorporation of sewage sludge into the soil occurs, or for certain reclamation projects.

(5) Where runoff of sludge from the active application area is evident, the operator shall cease further sludge application until the condition is corrected.

(6) Sewage sludge may [~~shall~~] not be applied under provisions of this section on land within a designated floodway.

(i) [~~(j)~~] Either a label must [~~shall~~] be affixed to the bag or other container in which sewage sludge is sold or given away for application to the land or an information sheet must [~~shall~~] be provided to the person who receives sewage sludge sold or given away in another [~~a other~~] container for application to the land. The label or information sheet must [~~shall~~] contain the following information:

(1) the name and address of the person who prepared the sewage sludge for sale or given [~~give~~] away in a bag or other container for application to the land;

(2) a statement that prohibits the application of the sewage sludge to the land except in accordance with the instructions on the label or information sheet;

(3) the annual whole sludge application rate for the sewage sludge that does not cause the annual metal loading rates in §312.43(b)(4) [~~(Table 4)~~] of this title (relating to Metal Limits) to be exceeded.

(j) [~~(k)~~] Nuisance controls [~~Controls~~].

(1) A land application site location must [~~shall~~] be selected and the site operated in a manner to prevent public health nuisances.

(2) Sewage sludge debris must be prevented from blowing or running off site boundaries or into surface waters.

(3) If necessary or when significant nuisance conditions occur, the operator shall:

(A) minimize dust migration from the site and access roadways; and

(B) minimize objectionable odors through incorporation of sewage sludge into the soil or by taking some other type of corrective action.

(k) [~~(l)~~] A permit or registration must [~~for the beneficial use of sewage sludge shall~~] specify the soil testing requirements for each application area.

(1) The testing frequency must take [~~shall be in accordance with a plan proposed by the registrant in the application, which takes~~] into account common agricultural methods of determining cover crop nutrient needs, soil pH, phytotoxicity, and concentrations of metals regulated by this chapter.

(2) No authorization may [~~registration shall~~] require soil testing of metals regulated by this chapter, at a frequency greater than once per five years or prior to submittal of a renewal application for a beneficial use site. Soil testing for metals regulated by this chapter may [~~shall~~] not be required for portions of the authorized [~~registration~~] site where sewage sludge has not been applied since the last soil metals testing was performed.

(3) Paragraph (2) of this subsection does not apply if the executive director becomes aware of circumstances warranting increased monitoring of metals regulated by this chapter, in order to address sites where metal loading into the soil is a threat to human health or environmental quality.

(l) A permit holder of a Class B sewage sludge site shall post a sign that is visible from a road or sidewalk that is adjacent to the premises on which the land application unit is located stating that a sewage sludge beneficial land application site is located on the premises.

(m) A permit holder of a Class B sewage sludge site may not accept sewage sludge, unless the sludge is transported to the land application unit in a covered container with the covering firmly secured at the front and back.

§312.48. Reporting.

Unless otherwise specified by the commission, sludge management facilities shall submit the following information to the Enforcement [~~Section of the Watershed Management~~] Division, the Wastewater Permitting Section of the Water Quality Division, and the Regional Office:

(1) annually by September 30 of each year:

(A) the information in §312.47 of this title (relating to Record Keeping) for the applicable [~~appropriate~~] requirements [~~by September 1 of each year~~]; [~~and~~]

(B) [~~(2)~~] the information in §312.47(a)(5)(A)(i) - (iv) of this title [~~by September 1 of each year~~] if:

(i) [~~(A)~~] the [~~The~~] sewage sludge does not meet the metal concentrations in §312.43(b)(3) of this title (relating to Metal Limits);

(ii) [~~(B)~~] 90% or more of any of the cumulative metal loading rates in §312.43(b)(2) [~~(Table 2)~~] of this title is reached at a site; or

(iii) [~~(C)~~] sewage [~~Sewage~~] sludge is applied to a site after 90% of any of the cumulative metal loading rates is reached at the site; and [~~.~~]

(C) for the Class B sewage sludge beneficial land application permit holder:

(i) evidence that the permit holder is complying with the nutrient management plan developed by a certified nutrient management specialist in accordance with the United States Department of Agriculture Natural Resource Conservation Service Practice Standard Code 590;

(ii) a completed Annual Sludge Summary Report Form; and

(iii) proof of continuation of commercial liability insurance and environmental impairment insurance;

(2) for the Class B sewage sludge beneficial land use permit holder, submit quarterly reports by the 15th day of the month following each quarter. Quarterly reports are be due December 15th, March 15th, June 15th, and September 15th and must include:

(A) a Quarterly Sludge Summary Report form; and

(B) a computer-generated quarterly report containing:

(i) the source, quality, and quantity of sludge applied to the land application unit;

(ii) the location of the land application unit, either in terms of longitude and latitude or by physical address, including the county;

(iii) the dates of delivery of Class B sewage sludge;

(iv) the dates of application of Class B sewage sludge;

(v) the cumulative amount of metals applied to the land application unit through the application of Class B sewage sludge;

(vi) crops grown at the land application unit site; and

(vii) the suggested agronomic application rate for the Class B sewage sludge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501284
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 239-5017

♦ ♦ ♦

SUBCHAPTER D. PATHOGEN AND VECTOR ATTRACTION REDUCTION

30 TAC §312.82

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission shall adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The proposed amendment implements HB 2546.

§312.82. Pathogen Reduction.

(a) Sewage sludge--Class A.

(1) Compliance requirements--Class A.

(A) For a sewage sludge to be classified as Class A with respect to pathogens, the requirements in subparagraphs (B) and (C) of this paragraph and the requirements of one of the alternatives listed in paragraph (2) of this subsection must [~~shall~~] be met.

(B) The requirements of the chosen alternative for pathogen reduction from paragraph (2) of this subsection must [~~shall~~] be met prior to or at the same time as the vector attraction reduction requirements, except the requirements in [~~paragraphs~~] §312.83(b)(6) - (8) of this title (relating to Vector Attraction Reduction).

(C) Either the density of fecal coliform in the sewage sludge must [~~shall~~] be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella (sp. bacteria) in the sewage sludge must [~~shall~~] be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given [~~give~~] away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title (relating to Applicability).

(2) Compliance alternatives--Class A.

(A) Alternative 1. The temperature of the sewage sludge that is used or disposed of must [~~shall~~] be maintained at a specified value for a period of time.

(i) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge must [~~shall~~] be 50 degrees Celsius or higher; the time period must [~~shall~~] be 20 minutes or longer; and the temperature and time period must [~~shall~~] be determined using the equation in this clause [~~(2)~~], except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.
Figure: 30 TAC §312.82(a)(2)(A)(i)
[~~Figure: 30 TAC §312.82(a)(2)(A)(i)~~]

(ii) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge must [~~shall~~] be 50 degrees Celsius or higher, the time period must [~~shall~~] be 15 seconds or longer, and the temperature and time period must [~~shall~~] be determined using the equation [~~(2) as~~] found in clause (i) of this subparagraph.

(iii) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period must [~~shall~~] be determined using the equation [~~(2) as~~] found in clause (i) of this subparagraph.

(iv) When the percent solids of the sewage sludge is less than 7.0%; the temperature of the sewage sludge is 50 degrees Celsius or higher; and the time period is 30 minutes or longer, the temperature and time period must [~~shall~~] be determined using the equation in this clause [~~(3)~~].
Figure: 30 TAC §312.82(a)(2)(A)(iv)
[~~Figure: 30 TAC §312.82(a)(2)(A)(iv)~~]

(B) Alternative 2. The temperature and pH of the sewage sludge that is used or disposed of must [~~shall~~] be maintained at specific values for periods of time.

(i) The pH of the sewage sludge must [~~shall~~] be raised to above 12 and must [~~shall~~] remain above 12 for 72 hours.

(ii) The temperature of the sewage sludge must [~~shall~~] be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(iii) At the end of the 72-hour [~~72 hour~~] period during which the pH of the sewage sludge is above 12, the sewage sludge must [~~shall~~] be air dried to achieve a percent solids in the sewage sludge greater than 50%.

(C) Alternative 3. The sewage sludge that is used or disposed of must [~~shall~~] be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) - (vi) (No change.)

(D) Alternative 4. The sewage sludge that is used or disposed of must [~~shall~~] be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) The density of enteric viruses in the sewage sludge must [~~shall~~] be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given [~~give~~] away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title (relating to Applicability).

(ii) The density of viable helminth ova in the sewage sludge must [~~shall~~] be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title.

(E) Alternative 5 (Processes to Further Reduce Pathogens (PFRP) [~~(PFRP)~~]. Sewage sludge that is used or disposed of must [~~shall~~] be treated in one of the PFRP [~~Processes to Further Reduce Pathogens (PFRP)~~] described in 40 Code of Federal Regulations (CFR)[~~,~~] Part 503, Appendix B.

(F) Alternative 6 (PFRP Equivalent). Sewage sludge that is used or disposed of must [~~shall~~] be treated in a process that has been approved by the United States [~~U.S.~~] Environmental Protection Agency (EPA) as being equivalent to those in subparagraph (E) of this paragraph.

(b) Sewage sludge--Class B.

(1) Compliance requirements--Class B.

(A) For a sewage sludge to be classified as Class B with respect to pathogens, the requirements in subparagraphs (B) and (C) of this paragraph must [~~shall~~] be met. As an alternative for a sewage sludge to be classified as Class B, the requirements of subparagraph (B) of this paragraph and paragraph (2) of this subsection must [~~shall~~] be met.

(B) The site restrictions in paragraph (3) of this subsection must [~~shall~~] be met when sewage sludge that is classified as Class B with respect to pathogens is applied to the land for beneficial use.

(C) A minimum of seven representative samples of the sewage sludge must [~~shall~~] be collected within 48 hours of the time that the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge. The geometric mean of the density of fecal coliform for the samples collected must [~~shall~~] be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony-forming [~~Colony forming~~] Units per gram of total solids (dry weight basis).

(2) Processes to Significantly Reduce Pathogens (PSRP) [~~PSRP~~] compliance alternatives--Class B. Sewage sludge that is used or disposed of must [~~shall~~] be treated in one of the PSRP [~~Processes to Significantly Reduce Pathogens~~] described in 40 CFR Part 503, Appendix B, or must [~~shall~~] be treated by an equivalent process approved by the EPA [~~U.S. Environmental Protection Agency~~], so long as all of the following requirements are met by the generator of the sewage sludge:

(A) prior [~~Prior~~] to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in subparagraph (F) of this paragraph;

(B) an [~~An~~] independent Texas registered professional engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP [~~Processes to Significantly Reduce Pathogens~~] at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification must [~~shall~~] include a statement indicating that the design meets all the applicable standards specified in 40 CFR Part 503, Appendix B [~~of 40 CFR Part 503~~];

(C) prior [~~Prior~~] to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the PSRP [~~processes to significantly reduce pathogens~~] at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP [~~Processes to Significantly Reduce Pathogens~~]. The acceptable processes and the minimum operational and recordkeeping requirements must [~~shall~~] be in accordance with established EPA [~~U.S. Environmental Protection Agency~~] final guidance;

(D) all [~~All~~] certification records and operational records describing how the requirements of this paragraph were met must [~~shall~~] be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;

(E) in [~~In~~] lieu of a generator obtaining a certification as specified in subparagraph (B) of this paragraph, the executive director will accept from the EPA [~~U.S. Environmental Protection Agency~~] a finding of equivalency to the defined PSRP [~~Processes to Significantly Reduce Pathogens~~]; and

(F) if [~~If~~] the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product must [~~shall~~] meet one of the PSRP [~~Processes to Significantly Reduce Pathogens~~], and [~~shall~~] meet the certification, operation, and recordkeeping [~~record keeping~~] requirements of this paragraph.

(3) Site restrictions.

(A) Food crops with harvested parts totally above the land surface that touch the sewage sludge/soil mixture must [~~shall~~] not be harvested from the land for at least 14 months after the application of sewage sludge.

(B) Food crops with harvested parts below the surface of the land must [~~shall~~] not be harvested for at least 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

(C) Food crops with harvested parts below the surface of the land must [~~shall~~] not be harvested for at least 38 months after

application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to the incorporation into the soil.

(D) Food crops, feed crops, and fiber crops must [~~shall~~] not be harvested for at least 30 days after application of sewage sludge.

(E) Animals must [~~shall~~] not be allowed to graze on the land for at least 30 days after application of sewage sludge.

(F) Turf grown on land where sewage sludge is applied may [~~shall~~] not be harvested for at least one year after application of sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.

(G) Public access to land with a high potential for public exposure must [~~shall~~] be restricted for at least one year after application of sewage sludge.

(H) Public access to land with a low potential for public exposure must [~~shall~~] be restricted for at least 30 days after application of the sewage sludge.

(c) Domestic septage.

(1) The site restrictions in subsection (b) [~~paragraph~~] (3) of this section must [~~shall~~] be met if domestic septage is applied to agricultural land, forest, or a reclamation site.

(2) The pH of domestic septage applied to agricultural land, forest, or a reclamation site must [~~shall~~] be raised to 12 or higher by alkali addition and, without the addition of more alkali, must [~~shall~~] remain at 12 or higher for a period of 30 minutes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501285
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 239-5017

♦ ♦ ♦

SUBCHAPTER F. DISPOSAL OF WATER TREATMENT SLUDGE

30 TAC §312.122

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission shall adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The proposed amendment implements HB 2546.

§312.122. Registrations and Permits.

(a) A permit shall be required before any disposal of water treatment sludge in a landfill. The requirements for applications, permits, permit conditions, and actions by the commission [~~TNRCC~~] shall be in accordance with Chapter 305 of this title (relating to Consolidated Permits). Applications for permits will be processed in accordance with Chapter 281 of this title (relating to Applications Processing).

(b) Any person who disposes of water treatment sludge in a land application unit, surface impoundment, or waste pile in accordance with §312.121 of this title (relating to Purpose, Scope, and Standards) shall apply for registration on a form approved by the commission [~~TNRCC~~]. A completed application must [~~shall~~] be submitted to the commission's [~~TNRCC's~~] Permitting Section of the Water Quality [~~Watershed Management~~] Division. Before issuing a registration, the executive director may review the application to determine whether the proposed activity meets the requirements of 40 Code of Federal Regulations [~~CFR,~~] Part 257.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501286
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 239-5017

♦ ♦ ♦

SUBCHAPTER G. TRANSPORTERS AND TEMPORARY STORAGE PROVISIONS

30 TAC §312.145

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas

Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission shall adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The proposed amendment implements HB 2546.

§312.145. Transporters--Recordkeeping [~~Record Keeping~~].

(a) Trip tickets. Persons who collect and transport waste subject to control under this subchapter shall maintain a record of each individual collection and deposit. Such records must [~~shall~~] be in the form of a trip ticket. Similar documentation may be used with written approval by the executive director. The trip ticket must [~~shall~~] include:

(1) name, address, telephone number, and commission registration number of transporter;

(2) name, signature, address, and telephone [~~phone~~] number of the person who generated the waste and the date collected;

(3) - (5) (No change.)

(6) identification (permit or site registration number, location, and operator) of the facility where the waste was deposited; [~~and~~]

(7) name and signature of facility on-site representative acknowledging receipt of the waste and the amount of waste received; and

(8) (No change.)

(b) Maintenance of records and reporting.

(1) Trip tickets. Trip tickets must [~~shall~~] be divided into five parts and records of trip tickets must [~~shall~~] be maintained as follows.

(A) One part of the trip ticket must [~~shall~~] have the generator and transporter information completed and be given to the generator at the time of waste pickup.

(B) The remaining four parts of the trip ticket must [~~shall~~] have all required information completely filled out and signed by the appropriate party before distribution of the trip ticket.

(C) One part of the trip ticket must [~~shall~~] go to the receiving facility.

(D) One part of the trip ticket must [~~shall~~] go to the transporter, who shall retain a copy of all trip tickets showing the collection and disposition of waste.

(E) One copy of the trip ticket must [~~shall~~] be returned by the transporter to the person who generated the waste [~~wastes~~] within 15 days after the waste is received at the disposal or processing facility.

(F) One part of the trip ticket must [~~shall~~] go to the local authority, if needed.

(2) Record retention [~~Copies~~]. Copies of trip tickets must [~~shall~~] be retained for five years and be readily available for review by commission's staff or be submitted to the executive director upon request.

(3) Rail or barge transport. Persons who transport waste via rail [~~,~~] or barge may use an alternate recordkeeping [~~record keeping~~] system, if approved by the executive director.

(4) Reporting [~~Submission of reports~~]. By July 1 [~~June 15th~~], transporters must [~~shall~~] submit to the executive director an annual summary of their activities for the previous period of June 1 through May 31, showing the following:

(A) - (C) (No change.)

(c) Discrepancies. A facility that [~~which~~] receives waste must note any significant discrepancies on each copy of the trip ticket.

(1) Trip ticket discrepancies are differences between the quantity or type of waste designated on the trip ticket, and the quantity or type of waste a facility actually received. Significant discrepancies in type are obvious differences that [~~which~~] can be discovered by inspection or waste analysis. Significant discrepancies in quantity are:

(A) - (B) (No change.)

(2) (No change.)

(d) Notification. A facility that [~~which~~] receives waste from a transporter that [~~who~~] cannot produce a registration acknowledgment under [~~pursuant to~~] §312.142(c) of this title (relating to Transporter Registration) must [~~shall~~] notify the appropriate Regional Office of the commission [~~TNRCC~~] within three days of the waste receipt of the transporter's failure to produce a current registration authorization.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501287
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 8, 2005
For further information, please call: (512) 239-5017

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts new §25.199 relating to Transmission Planning, Licensing and Cost-Recovery and an amendment to §25.231 relating to Cost of Service with changes to the proposed text as published in the October 29, 2004 issue of the *Texas Register* (29 TexReg 9953). The amendment and new section are necessary to implement provisions of the Public Utility Regulatory Act (PURA) §35.004(d) and §39.203(e), as amended by House Bill 2548, 78th Leg., R.S., ch. 295, §3 (2003) (HB 2548). New §25.199 prescribes the procedures and criteria under which the commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to reduce transmission constraints in the Electric Reliability Council of Texas (ERCOT) in a cost-effective manner. The amendment to §25.231 prescribes additional criteria the commission would consider in authorizing construction work in progress, a special form of rate relief, for a transmission utility that is ordered to build facilities under §25.199. This new §25.199 and amendment to §25.231 are adopted under Project Number 28884.

No party requested a public hearing on proposed new §25.199 and the amendment to §25.231.

The commission received comments on the proposed new §25.199 and amendment to §25.231 from San Antonio City Public Service (CPS), Brazos Electric Power Cooperative, Inc. (Brazos), Reliant Energy, Inc. (Reliant), CenterPoint Energy Houston Electric, LLC (CenterPoint), LCRA Transmission Services Corporation (LCRA TSC), TXU Electric Delivery Company (TXU Delivery), American Electric Power Company, Inc. (AEP), Texas Industrial Energy Consumers (TIEC), ERCOT, FPL Energy, LLC (FPLE), the Wind Coalition and Texas State Representative Phil King. In its comments, the Wind Coalition represented the views of FPL Energy, PPM Energy, GE Wind Energy, Vestas-Americas, Inc., Gamesa Energy Southwest, Cielo Wind Power, Environmental Defense, Public Citizen's Texas Office and the American Wind Energy Association.

Several commenters criticized §25.199, expressing the view that the rule did not go far enough to promote the development of wind resources in Texas. LCRA TSC, AEP, FPLE, and the Wind Coalition all commented that the rule addressed the reliability and economic aspects of transmission constraints, but that the rule did little to achieve the renewable goal set forth in PURA §39.904(a). LCRA TSC said that the rule did not even consider the renewable goal as authorized by HB 2548. One often-repeated concern was that the ERCOT transmission process did not adequately address the particular needs of wind generation. Parties explained that the development of wind generation facilities takes far less time than the development of fossil fuel generation and that the current ERCOT planning process for transmission was better suited to meeting the needs of fossil fuel generation. Parties explained that the current ERCOT process requires that collateralized interconnection agreements be signed with ERCOT before it would consider upgrading the transmission system to accommodate the energy. Wind facilities take far less time to develop than transmission capacity and parties noted that there can be a significant time lag between when the wind facility is operational and when the transmission upgrades can be made to accommodate the wind energy. Parties claimed that the experience with the heavily curtailed wind projects in the McCamey, Texas area have caused bankers to be unwilling to commit capital investment for wind facilities significantly in advance of the necessary transmission capacity to move the energy to market. Parties argued that, without specific language in the rule to accommodate this disconnect in the transmission expansion process, financing of new wind construction would become harder to achieve. TIEC, on the other hand, suggested that the real problem with the recent dearth of wind development investment was the absence of the federal production tax credit which has since been reinstated.

LCRA TSC, AEP, FPLE, and the Wind Coalition all complained that the proposed new rule did nothing to address consideration of proposed transmission projects to be built in anticipation of future wind development to reduce the time lag between the construction of the wind facility and the upgrades to the transmission system needed to accommodate the facility's energy. AEP suggested that the requirement that all projects go through the regular ERCOT transmission planning process "merely codifies the normal evaluation and approval process that all potential transmission improvement would undergo at ERCOT." AEP argued that, if the legislation was intended to help Texas meet its renewable capacity goal, then requiring that applicants first avail themselves of the ERCOT planning process would be unwieldy, inefficient, and potentially could result in numerous procedural traps once the certificate of convenience and necessity (CCN) is filed. AEP suggested one such procedural trap could be a possible conflict in a subsequent CCN proceeding if ERCOT declined to approve a project but the commission later determined the project was necessary. AEP viewed that concern as additional justification to bypass the ERCOT process.

TIEC disagreed with LCRA TSC, AEP, FPLE, and the Wind Coalition, and commented that the rule provided a feasible framework for developing additional transmission expansion without ignoring the processes already existing in the ERCOT

stakeholder process and the CCN process. Reliant, in its initial comments, and TXU Delivery, in its reply comments, agreed with TIEC that projects brought to the commission under the requirements of PURA §39.203(e) must have previously been considered in the ERCOT planning process and not be the subject of a pending CCN proceeding. TIEC emphasized that the collaborative ERCOT stakeholder process is the best way to ensure efficient development of transmission resources. TIEC reminded the commission that, in its initial comments in Project 28884, it pointed out that the legislative intent was for the process envisioned by PURA §39.203(e) to be used as a last resort when the ERCOT and CCN processes have failed to resolve acute transmission constraint issues.

AEP suggested a process whereby the commission staff would determine, from information submitted by interested parties, where significant potential for wind development existed but could not be realized due to a lack of transmission infrastructure. AEP recommended that, after an area was identified, the commission initiate a proceeding to determine the amount of renewable energy for which transmission capacity should be provided. ERCOT would then provide cost and other project development information to the commission, after which the commission could determine whether to order the construction of the facilities. AEP reasoned that this was a thoughtful and cost-effective way to get out in front of the wind development and circumvent the time lag issues. TXU Delivery replied that suggesting that the commission's rule language be broadened to include consideration of future development of generating resources could make the rule inconsistent with the existing requirements of PURA Chapter 37 regarding the need for transmission facility construction. Representative King supported AEP's proposal. In reply comments, the Wind Coalition urged the commission to adopt rule language that more proactively addresses future constraints. The Wind Coalition argued that the commission was empowered by HB 2548 to consider current as well as future transmission constraints when considering ordering transmission facilities under this section.

Commission response

The language of PURA §39.203(e) is clear: "The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are *not* being resolved through Chapter 37 or the ERCOT transmission planning process." (Emphasis added.) PURA contemplates that the commission would order the construction of transmission facilities if transmission service issues are not being adequately addressed by the CCN and ERCOT processes.

The commission agrees with commenters that the ERCOT transmission planning process does not always accommodate the particular needs of wind development. An argument made by an applicant that building transmission in anticipation of wind generation is a cost-effective means by which to circumvent transmission constraints and achieve an important policy goal is likely to be rejected by the ERCOT process. The process that the commission is establishing in the rule would give parties who are dissatisfied with the outcome of the ERCOT planning process an opportunity for commission review, and the commission would have the authority to order a utility to construct new transmission facilities if it concluded that legitimate concerns about transmission service have not been adequately addressed.

The commission disagrees with LCRA TSC that the rule ignores the goal of renewable development in HB 2548. House Bill 2548 included the consideration of the state's renewable goal as part of an amendment to PURA §37.056(c), which delineates the factors the commission must consider in a CCN proceeding. PUC Substantive Rule §25.101(c)(6)(D) (relating to Certification Criteria) refers to the statutory requirements of PURA §37.056(c). The commission rules thus adopt the statutory criteria for granting a CCN by reference, including the state's renewable goal.

The amended PURA §39.203(e) clarifies that the commission has the authority to order the construction of transmission to relieve constraints in ERCOT in a cost-effective manner. This section does not specifically refer to congestion caused by renewable energy generation (including wind generation). The treatment of various transmission needs under the new §25.199 tracks the statute: the new section establishes a process in which a party that has a concern about any transmission-service need that it believes is not being addressed can raise the matter with the commission.

The commission declines to adopt AEP's specific process for identifying areas where significant potential for wind development exists for several reasons: the commission believes that the rule, as proposed, is adequate to address any legitimate concerns about the ERCOT planning process and the commission believes that the rule should not put transmission needs related to the renewable energy goal ahead of other transmission needs, such as those related to reliable service to customers and generators' access to loads. The commission is not precluded from facilitating or conducting fact-finding to identify areas conducive to wind facility development. In fact, the commission believes that it is an appropriate forum in which to develop information on the location of favorable renewable resource areas and the costs of building transmission to facilitate their exploitation. However, for the reasons set forth above, the commission declines mandating by rule the specific process outlined by AEP.

In response to AEP, the Wind Coalition, and others' assertion that the rule relies on the existing ERCOT planning process, the commission notes that the process outlined in the rule is entirely consistent with amended PURA §39.203(e). As is noted above, the statute contemplates commission action where the ERCOT and Chapter 37 processes do not resolve the problem.

The commission also does not anticipate the same conflict during the CCN process that AEP does. PURA §39.203(e) states that in any proceeding brought under chapter 37, an applicant need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public. This provision means that "need" issues would be resolved in a proceeding under PURA §39.203(e), and that other routing and impact issues would be resolved in the subsequent chapter 37 proceeding.

The commission agrees with the Wind Coalition and other parties that it can consider current and future transmission constraints and believes the rule language does not limit its ability to do so. The commission does not believe that it is necessary to include the adjectives "current" or "future" when referring to constraints that it may address under this section.

CPS submitted comments arguing that the commission lacks the jurisdiction to order a municipality to order the construction of transmission facilities to address safety and reliability or to address the cost-effective reduction in congestion. CPS argued

that because PURA §39.203(e) does not apply to municipalities, new §25.199 cannot apply to San Antonio.

Commission response

Prior to the last legislative session, PURA included provisions that authorized the commission to require that municipal utilities construct transmission facilities where the commission determined that there was a transmission need that warranted the construction of the new facilities. PURA §35.005(b) provides: "The commission may require transmission service at wholesale, including the construction or enlargement of a facility." This section clearly applies to municipal utilities because PURA §35.005 applies to electric utilities, which is defined in PURA §35.001 to include municipal utilities, for the purposes of Chapter 35, Subchapter A. The 2003 amendment of PURA, which amended §39.203(e), did not impair the pre-existing commission authority to require the construction or enlargement of facilities that was set out in §35.005(b). This rule is primarily intended to implement the 2003 legislation but it is not adopted in a vacuum. Powers of the commission arising from other sections of PURA may be relied on in adopting this rule, and the commission identified PURA §35.005 as one of the authorities for the adoption of the rule.

In its initial comments, LCRA TSC stated that the rule should only apply to transmission and distribution utilities and that all references to electric utilities should be removed. LCRA TSC later clarified that its initial comment was not an indication of LCRA TSC's position on the commission's jurisdiction over municipally-owned utilities but rather LCRA TSC meant to point out that the rule was not consistent throughout in using the terms "electric utility" and "transmission and distribution utility" in every instance.

Commission response

The commission agrees with LCRA TSC that the proposed new rule did not use the terms consistently throughout and amends the rule language accordingly.

Reliant commented that both subsection (b) and (d) of §25.199 are titled "Application." To minimize confusion Reliant recommended renaming subsection (b) to "Applicability" and subsection (d) to "Filing requirements."

Commission response

The commission agrees with Reliant and makes the recommended changes to §25.199.

Brazos commented that allowing any "interested party" to file a request under new §25.199 was too broad and would allow a person to file if it claims to have an interest in the ERCOT electric market. Brazos believed the commission should consider limiting who can make a request and suggested revising the term "interested party" to "market participant" as defined in the ERCOT protocols.

Commission response

The commission disagrees that allowing "interested parties" to file requests under the proposed new rule is too broad. Brazos' suggestion to use the term "market participant" as defined by the ERCOT protocols does not allow for the flexibility and scope the commission expects to achieve in the proposed new rule. "Market participant" is defined in the ERCOT protocols as "An Entity that engages in any activity that is in whole or in part the subject of these Protocols, regardless of whether such Entity has executed an Agreement with ERCOT." The commission prefers to allow entities such as prospective investors in the ERCOT electric market and other parties not contemplated within ERCOT protocol's definition of "market participant" to file applications under new §25.199. The commission's precedent includes broad standards for standing to participate in a contested case and it believes that those standards are appropriate in this context.

Brazos also submitted suggestions for clarifying the distinction between transmission upgrades addressing safety and reliability upgrades addressing constraints. Brazos interpreted the two situations as separate and concluded that the cost-effectiveness requirement was only applicable to the situation where the facility upgrade was to address a transmission constraint.

Commission response

The commission believes that Brazos' suggested revision is not necessary. The provision as proposed applies the cost-effectiveness requirement only to the elimination of transmission constraints.

CenterPoint and the Wind Coalition expressed concern that the rule did not give parties seeking relief under §25.199 the ability to file an application with the commission if a transmission project was neither accepted nor rejected in the ERCOT process. CenterPoint suggested that language be added imposing a time limit on ERCOT so an aggrieved party could use the commission's process in the event that ERCOT fails to take any action on the request within a prescribed time period. CenterPoint suggested that, since the ERCOT process requires up to 139 days for evaluation of a project, allowing 140 days was reasonable.

The Wind Coalition and FPLE concurred with CenterPoint that the amount of time ERCOT has to review a transmission project should be limited. The Wind Coalition commented that the commission should retain the right to monitor and intervene in the ERCOT planning process, especially when the ERCOT process has stalled, and that PURA §39.203(e) supported this position. The Wind Coalition stated that this would provide additional incentive for the ERCOT process to review transmission projects in a timely manner. The Wind Coalition suggested that language be added to subsection §25.199(e)(2)(b) allowing an applicant to petition the commission under §25.199 if the project under question had been submitted to ERCOT and had not been approved or rejected within 180 days of submission.

In reply comments, TIEC voiced its reluctance to have new §25.199 contain language imposing explicit time limits on the ERCOT planning process. TIEC stated that this limitation on the ERCOT planning process, as well as suggestions by parties that the ERCOT planning process should be bypassed altogether, turns the transmission planning process on its head. TIEC wrote that such "limitations on the ERCOT planning process would undermine the holistic, cooperative process that is vital to the efficient development of transmission facilities."

The Wind Coalition also proposed language whereby an applicant could request that the commission order a transmission provider to prepare and file a CCN for facilities that had been approved through the ERCOT process, but had seen no subsequent activity by the electric or transmission and distribution utility assigned to build the line.

Commission response

The commission agrees with CenterPoint, FPLE, and the Wind Coalition that the ERCOT process should not be open-ended. However, the commission is not prepared to establish a fixed

time limit for the ERCOT or CCN process. Instead, the commission can assess the facts surrounding ERCOT's consideration of a transmission-service need or surrounding a utility's progress in preparing a CCN application and decide whether it is appropriate for the commission to order new facilities to be built. If the ERCOT process breaks down and does not accomplish its goal of addressing a proposed project in a reasonable amount of time, the commission has the authority to address an application under this section. The commission modified the new section in response to the comments of CenterPoint and the Wind Coalition to provide that, where an applicant believes that an ERCOT decision imposes a condition on the approval of a transmission project that is tantamount to rejection, it may treat the ERCOT action as a rejection and challenge it through the process set out in new §25.199. In response to concerns regarding a utility's progress in the CCN process, the commission modified the rule to require that the electric utility or transmission and distribution utility present evidence regarding a reasonable time for submitting its CCN application and that it present evidence in the CCN proceeding regarding reasonable times for planning, licensing and constructing the line, so that an appropriate timeline may be included in any commission final order granting the CCN.

TIEC commented that the commission should clarify the requirements for filing a complaint under new §25.199 to require applicants to demonstrate that their transmission issues were not being addressed through an individual utility's transmission planning process prior to the utility filing a CCN application. TIEC stated that it believed that the commission intended for this language to preserve the integrity of the CCN process, but it is concerned that the rule could be used to undercut a utility's own internal transmission planning process.

TIEC commented that utilities must be able to evaluate their transmission resources and needs on a system-wide basis and then allocate resources accordingly. TIEC expressed concern that utilities could be threatened with contested case proceedings prior to the utility being able to file its CCN application. TIEC went on to state that this could preclude a utility from conducting the type of open evaluation of its system transmission needs essential to viable transmission planning. TIEC feared this could result in inefficient deployment of transmission resources, potentially resulting in higher consumer costs and lower reliability.

Commission response

The commission does not believe that there is a significant risk that parties would use §25.199 to circumvent an electric or transmission and distribution utility's planning process. TIEC's suggested modification could create an opportunity for a utility to use its "individual" planning process to prevent a party from petitioning the commission for relief under §25.199. The rule requires that an applicant demonstrate that the facilities are not the subject of a current CCN proceeding and the facilities have been presented to and considered in the ERCOT planning process and have been rejected. TIEC would also require that an applicant who comes to the commission with a proposal for new transmission facilities under the rule demonstrate that the facilities are not under development in the utility's planning process. Most of the major projects that other market participants have an interest in also have a regional impact and are evaluated in the ERCOT planning process, rather than exclusively in the utility planning process. For this reason, the commission believes that TIEC's suggested modification is unnecessary.

ERCOT submitted reply comments suggesting that there may be a situation where one project is rejected in favor of another that is better for ERCOT as a whole. ERCOT expressed concern that the sponsor of a project not chosen could come to the commission and ask that its project be ordered built. ERCOT supplied the commission with suggested language that specifically requires the applicant to provide information showing that its alternative is less expensive than ERCOT's approved project.

Commission response

The commission agrees with ERCOT that this scenario is a possibility. However, the rule cannot anticipate every eventuality. Contested proceedings provide a workable venue for parties to air issues such as the one ERCOT has described. The commission expects ERCOT or any other concerned party to intervene and present arguments to the commission regarding the different projects considered by the planning process and associated costs. Therefore, the commission declines to make ERCOT's suggested changes.

The Wind Coalition commented that placing the burden of proof on the applicant reduces the level of the commission's participation in the decision-making process and is undue and onerous for the applicant. The Wind Coalition suggested that the rule be changed to "permit the commission to make findings, independent of anything an applicant has submitted." The Wind Coalition also suggested that if ERCOT opposed the applicant, it should be required to present a reasonable comprehensive cost benefit analysis with regard to the facilities.

Commission response

The commission modified the new section to address the Wind Coalition comments. Contested proceedings at the commission typically place the burden of proof on the applicant and the rule, as modified, will still place the burden of persuasion on the applicant. Where the proposed new rule also implicitly placed a burden of production of evidence on the applicant, the modifications to the procedure should assist an applicant in developing evidence to present its case. In this regard, the commission recognizes that some information relating to a transmission proposal may not be available to an applicant. To this end, the commission is making a proceeding filed under §25.199 subject to certain provisions of PUC Procedural Rule §22.251 (relating to Review of ERCOT Conduct). These provisions require that ERCOT file a response to the allegations in a complaint. The commission also addressed the Wind Coalition's concerns about the resources required by a proceeding filed under §25.199, by establishing a threshold review that would avoid the expenses of a contested case, if the commission concludes that, for legal and policy reasons, a review under the new section is not warranted.

Under the procedure set out in the new section, the applicant would file an application containing the information required in §22.251(d). A copy would be served upon ERCOT's General Counsel, every other entity from whom relief is sought, the Office of Public Utility Counsel and any other appropriate party. Within 14 days of receipt, ERCOT would file a response, as required under §22.251(f). ERCOT would also be required to provide notice of the application under §22.251(e) and the notice would be provided to all transmission service providers in ERCOT. The presiding officer would review the responses to the application, as a part of the commission's threshold review. The presiding officer would make an initial recommendation within 20 days of the date ERCOT's response is filed as to whether the applicant's request should be allowed to proceed. The presiding officer's recommendation would be reviewed by the commission, and the commission would decide whether or not a cost-benefit analysis

should be undertaken. This process would require that ERCOT would be a party to any proceeding under this section and should permit an applicant to conduct discovery, if needed, to develop additional information. The threshold review would also obviate the expenditure of extensive resources on a proceeding if the commission concludes that it is not warranted, for legal and policy reasons.

AEP suggested that the commission narrow the rule's language as it relates to the commission's choice of a transmission and distribution utility ordered to build the transmission facility. AEP preferred that the commission adopt ERCOT's concepts from the Power System Planning Charter and Process which is similar to the process used in §25.195(c) (relating to Terms and Conditions for Transmission Service). In reply comments, the Wind Coalition echoed AEP's concerns and added that merchant transmission developers also should be considered if that was the most cost-effective means by which to expediently build the transmission facilities.

Commission response

The commission agrees with AEP that the process described in §25.195(c), in most cases, is the logical procedure to follow when choosing the electric or transmission and distribution utility which will be ordered to build the facilities. However, there might be instances where another utility or a merchant transmission developer (as suggested by the Wind Coalition) is better suited to build the facilities in a cost-effective expeditious manner. The commission will retain its authority to make that determination during the proceeding.

TXU Delivery commented that the requirement that a final order issued pursuant to new §25.199 include a date certain for the transmission service provider to file a CCN at the commission had theoretical benefits but that there were several practical problems with the requirement. TXU Delivery stated that it had concerns that the method of establishing that date was uncertain and that no specific time frame is appropriate for every transmission project. TXU Delivery suggested that such a determination be made only with input from the utility ordered to build the line.

TXU Delivery stated that, even after developing a reasonable timeframe consistent with the information submitted by the utility, there are circumstances outside the control of the utility that may preclude it from filing a CCN by the date ordered. TXU Delivery urged the commission to include language in the new rule that allows for the extension of the deadline if the utility shows good cause. TXU Delivery expressed fears that, if a good cause exception were not allowed, the utility might be forced to file an incomplete CCN that could be challenged by interveners and ultimately have to be rejected by the commission, frustrating the purpose of the deadline.

Commission response

The commission agrees that every transmission project has different requirements and that those requirements impact the time required to develop the CCN filing. The commission expects that a utility that has an interest in a particular project would intervene as an active participant in the proceeding, especially in light of the fact that ERCOT is required to provide notice to all transmission service providers within ERCOT, and provide the relevant data crucial to a commission determination of an appropriate deadline for filing a CCN. The commission believes that the utility input is crucial in determining a CCN filing deadline that makes sense. The commission also agrees with TXU Delivery that there could be circumstances beyond the utility's control that should lead to a reasonable extension of the ordered deadline and, therefore, modifies the new rule accordingly.

CPS commented that, in the case of a municipally-owned utility, the rule language regarding an order issued under this new section as it pertains to the subsequent CCN requirements is inapplicable.

Commission response

The commission agrees with CPS that municipally-owned utilities are not required to file for a CCN and amends the language accordingly.

The commission's proposed new rule provided that construction work in progress (CWIP) could be available if there would be a significant delay between initial investment and the initial cost recovery for a transmission project. AEP asserted that the commission's failure to define the term "significant" will be a matter of much unnecessary controversy. CenterPoint recommended clarifying the rule to indicate that a "significant delay" would be 12 months. AEP was not opposed to this suggestion should its own suggestion not be adopted. AEP argued that §25.231 should not contain a threshold test for inclusion of CWIP associated with projects ordered pursuant to §25.199. Instead, if a utility is ordered to undertake transmission improvements, project costs classified as CWIP should be expeditiously included in the utility's rate base. AEP asserted that this would likely reduce the total cost to the transmission customers of the project over the life of the transmission line and might lower a utility's financing costs, improve a utility's cash flow and minimize the impact of future rate adjustments. AEP further argued that the commission should authorize inclusion of CWIP in any transmission cost of service filing, including the annual update filings permitted under §25.192(g) (relating to Transmission Service Rates). AEP, LCRA TSC, CenterPoint and TXU Delivery suggested that §25.192(g) be amended to allow for recovery of CWIP in an interim update proceeding with a complete review of the costs in the utility's next rate proceeding. TXU Delivery similarly argued that there should be no threshold test for inclusion of CWIP, stating that requiring a utility to certificate and construct what is likely to be a lengthy 345-kV transmission project will, by definition, constitute an exceptional circumstance. CenterPoint also argued that otherwise applicable criteria for inclusion of CWIP do not apply for transmission projects ordered under new §25.199. LCRA TSC stated that the new rule does not change the existing standard for recovery of CWIP and that the Legislature likely intended a lesser burden when enacting HB 2548. LCRA TSC argued that the commission should allow all approved transmission projects to be eligible for CWIP recovery to encourage utilities to proceed expeditiously to build transmission in the ERCOT region.

TIEC suggested that the rule include a requirement that the utility show that the project is not being imprudently planned or managed. AEP disagreed. It argued that PURA §35.004(d) authorizes the inclusion of CWIP if conditions warrant the action but does not require the specific prudence showing contained in PURA §36.054(b).

Brazos argued that it would be more appropriate to include the CWIP-related provision in §25.192 which pertains to a utility's transmission service rates as opposed to §25.231 which pertains to an electric utility's cost of service. TXU Delivery made a similar argument.

Commission response

Pursuant to PURA §36.054(a), the inclusion of CWIP is an exceptional form of rate relief which may be granted only if the utility demonstrates that inclusion is necessary to the utility's financial integrity. Under PURA §36.054(b), CWIP cannot be included in the rate base for a major project under construction to the extent that the project has been inefficiently or imprudently planned or managed. House Bill 2548 revised PURA §35.004(d) to provide that, notwithstanding PURA §36.054(a), if the commission determines that conditions warrant the action, the commission may authorize the inclusion of CWIP in the rate base for transmission investment required by the commission under PURA §39.203(e). The requirements in PURA §36.054(b) regarding efficient and prudent planning and management are still applicable. The commission agrees with TIEC's position regarding this requirement and amends the rule accordingly. In light of this modification, the commission declines to amend §25.192(g) to authorize inclusion of CWIP in an annual update filing as a prudence examination is not appropriate in such a proceeding.

The commission declines to automatically allow CWIP for all projects ordered under new 25.199. The Legislature specified that the commission could allow recovery CWIP "if conditions warrant;" therefore, the commission believes that it must examine the circumstances underlying a utility's request for CWIP. Furthermore, if utilities are assured of obtaining CWIP in such instances, they would have an incentive to avoid applying for a CCN until ordered to do so. With regard to the question of what constitutes a "significant delay," the commission declines to adopt a specific definition for this term, such as the 12 months suggested by CenterPoint. The need for CWIP is likely to be different for different utilities and different projects.

Finally, the commission declines to move the proposed amendment from §25.231 to §25.192 on procedural grounds. The amendment was proposed in §25.231, and the commission does not have the ability, under the Administrative Procedures Act, to amend a different section, without issuing a new proposal to amend that section.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS

16 TAC §25.199

New §25.199 is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically: PURA §35.004 which requires a transmission and distribution utility to provide transmission services at non-discriminatory rates and terms and permits the commission to allow a utility to include construction work in progress related to transmission investment in its rate base; PURA §35.005 which grants the commission the authority to order transmission service to include the construction or enlargement of a facility; PURA §37.056 which delineates the criteria the commission will consider to grant or deny a certificate of convenience and necessity; PURA §39.203 which grants the commission authority to require transmission facilities to be built to ensure safe and reliable service, and to relieve congestion in a cost-effective manner where the constraints are not being resolved through Chapter 37 or the ERCOT planning process.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.004, 35.005, 37.056 and 39.203.

§25.199. Transmission Planning, Licensing and Cost-Recovery for Utilities within the Electric Reliability Council of Texas.

(a) Purpose. The purpose of this section is to prescribe the procedures and criteria under which the commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe, reliable service and to reduce transmission constraints within the Electric Reliability Council of Texas (ERCOT) in a cost-effective manner.

(b) Applicability. This section applies to all electric utilities, transmission and distribution utilities and ERCOT. This section does not apply to an electric utility or transmission and distribution utility located outside of the ERCOT region. For the purpose of this section, an electric utility includes a municipally-owned utility and an electric cooperative.

(c) Eligibility for filing a request under this section. Any interested party in the ERCOT electric market may file a request for an order under this section.

(d) Filing requirements. Sections 22.251(d) - (f) of this title (relating to Review of ERCOT Conduct) shall apply to proceedings under this section, except as otherwise provided. In accordance with §22.251(f) of this title, ERCOT shall file a response to the application within 14 days after it receives the notice required under subsection (g) of this section. ERCOT shall include as part of the response all existing, non-privileged documents that support ERCOT's position on the issues identified by the applicant.

(e) Standard for review. The commission may require an electric utility or a transmission and distribution utility to construct or enlarge transmission facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. An applicant bears the burden of persuading the commission that the facilities are necessary to ensure safe and reliable service for the state's electric markets or to reduce transmission constraints within ERCOT in a cost- effective manner.

(f) Threshold requirements. In its request, the applicant must plead facts that are sufficient, if proven, to show that the request is likely to be granted under the standards of this section.

(1) The applicant must provide sufficient information for the presiding officer to determine that the transmission constraints are not being resolved through Chapter 37 or the ERCOT transmission planning process. In particular, the applicant shall demonstrate that:

(A) the facilities are not the subject of a pending application for a certificate of convenience and necessity; and

(B) the facilities have been presented to and considered in the ERCOT transmission planning process and have been rejected, or have been approved with one or more conditions that are tantamount to rejection, either in the regional planning process or by the board of directors, or ERCOT has not acted upon the application within a reasonable amount of time.

(2) Within 20 days after ERCOT has filed its response to the complaint pursuant to subsection (d) of this section, the presiding officer shall make a recommendation as to whether the applicant has shown that the facts alleged, if proved, would warrant granting the application. The recommendation shall be submitted to the commission for its consideration and action at an open meeting.

(g) Notice. An applicant shall serve copies of its complaint and other documents, in accordance with §22.74 of this title (relating to Service of Pleadings and Documents), and in particular shall serve a copy of the complaint on ERCOT's General Counsel, every other entity from whom relief is sought, the Office of Public Utility Counsel, and any other party as may be appropriate. The notice required by ERCOT under §22.251(e) of this title shall also be provided to all transmission service providers in ERCOT.

(h) Cost effectiveness. Prior to granting a request filed pursuant to this section, the commission, together with the applicant or other parties as appropriate, may undertake a comprehensive cost- benefit analysis to consider both quantitative and qualitative costs and benefits of the proposed facilities. The analysis should consider at a minimum:

(1) capital costs;

(2) projected operation and maintenance costs;

(3) carrying costs of the proposed upgrade;

(4) a comparison of the cost of the proposed transmission project to other congestion- management techniques, such as system re-dispatch;

(5) system reliability; and

(6) impact on wholesale power costs in the ERCOT region.

(i) Commission order. If the commission concludes that the applicant has demonstrated that the facilities are needed to ensure safe and reliable service for the state's electric markets or to reduce transmission constraints within ERCOT in a cost-effective manner and that the constraints are not being resolved through Chapter 37 or the ERCOT transmission planning process, it shall order an electric or transmission and distribution utility or utilities to construct or enlarge the requested facilities.

(1) The commission shall issue the final order in a proceeding initiated under this section not later than the 180th day after the filing of a complete, non-deficient request. Notwithstanding the foregoing, however, the 180-day deadline may be extended by the commission for good cause.

(2) An order adopted under this section:

(A) except in the case of a municipally-owned utility, shall be contingent on the successful outcome of the subsequent certificate of convenience and necessity proceeding for the proposed facilities;

(B) except in the case of a municipally-owned utility, shall include a date, appropriate for the required construction, by which the electric utility or transmission and distribution utility ordered to construct the facilities will be required to file an application for a certificate of convenience and necessity, which may be extended by the commission for good cause;

(C) shall provide that the electric utility or transmission and distribution utility need not prove in any proceeding filed under PURA Chapter 37 that the construction or upgrade ordered is necessary for the convenience, accommodation, convenience or safety of the public, and need not address the factors listed in PURA §§37.056(c)(1)-(3) and (4)(E);

(D) except in the case of a municipally-owned utility, shall provide that in any proceeding filed under PURA Chapter 37 the electric utility or transmission and distribution utility shall present evidence regarding reasonable times for planning, licensing and constructing the line, so that an appropriate timeline may be included in any commission final order granting a certificate for a line; and,

(E) shall provide that the electric utility or transmission and distribution utility ordered to construct or enlarge the requested facilities may request the inclusion of construction work in progress (CWIP) in the electric utility or transmission and distribution utility's transmission cost of service rate proceeding. The commission will grant CWIP in accordance with §25.231 of this title (relating to Cost of Service).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501301
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: April 13, 2005
Proposal publication date: October 29, 2004
For further information, please call: (512) 936-7223

♦ ♦ ♦

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.231

The amendment to §25.231 is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically: PURA §35.004 which requires a transmission and distribution utility to provide transmission services at non-discriminatory rates and terms and permits the commission to allow a utility to include construction work in progress related to transmission investment in its rate base; PURA §35.005 which grants the commission the authority to order transmission service to include the construction or enlargement of a facility; PURA §37.056 which delineates the criteria the commission will consider to grant or deny a certificate of convenience and necessity; PURA §39.203 which grants the commission authority to require transmission facilities to be built to ensure safe and reliable service, and to relieve congestion in a cost-effective manner where the constraints are not being resolved through Chapter 37 or the ERCOT planning process.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.004, 35.005, 37.056 and 39.203.

§25.231. Cost of Service.

(a) Components of cost of service. Except as provided for in subsection (c)(2) of this section, relating to invested capital; rate base,

and §23.23(b) of this title, (relating to Rate Design), rates are to be based upon an electric utility's cost of rendering service to the public during a historical test year, adjusted for known and measurable changes. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the public shall be included in allowable expenses. In computing an electric utility's allowable expenses, only the electric utility's historical test year expenses as adjusted for known and measurable changes will be considered, except as provided for in any section of these rules dealing with fuel expenses.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal electric utility service and in maintaining electric utility plant used by and useful to the electric utility in providing such service to the public. Payments to affiliated interests for costs of service, or any property, right or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the Public Utility Regulatory Act §36.058.

(B) Depreciation expense based on original cost and computed on a straight line basis as approved by the commission. Other methods of depreciation may be used when it is determined that such depreciation methodology is a more equitable means of recovering the cost of the plant.

(C) Assessments and taxes other than income taxes.

(D) Federal income taxes on a normalized basis. Federal income taxes shall be computed according to the provisions of the Public Utility Regulatory Act §36.060.

(E) Advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service shall not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the electric utility for services rendered to the public. The following expenses shall be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:

(i) funds expended advertising methods of conserving energy;

(ii) funds expended advertising methods by which the consumer can effect a savings in total electric utility bills;

(iii) funds expended advertising methods to shift usage off of system peak; and

(iv) funds expended promoting renewable energy.

(F) Nuclear decommissioning expense. The following restrictions shall apply to the inclusion of nuclear decommissioning costs that are placed in an electric utility's cost of service.

(i) An electric utility owning or leasing an interest in a nuclear-fueled generating unit shall include its cost of nuclear decommissioning in its cost of service. Funds collected from ratepayers for decommissioning shall be deposited monthly in irrevocable trusts external to the electric utility, in accordance with §25.301 of this title (relating to Nuclear Decommissioning Trusts). All funds held in short-term investments must bear interest. The level of the annual cost of decommissioning for ratemaking purposes will be determined in each rate case based on an allowance for contingencies of 10% of the cost of decommissioning, the most current information reasonably available regarding the cost of decommissioning, the balance of funds in the decommissioning trust, anticipated escalation rates, the anticipated return on the funds in the decommissioning trust, and other relevant factors. The annual amount for the cost of decommissioning determined pursuant to the preceding sentence shall be expressly included in the cost of service established by the commission's order.

(ii) In the event that an electric utility implements an interim rate increase, including an increase filed under bond, an incremental change in decommissioning funding shall be included in the increase.

(iii) An electric utility's decommissioning fund and trust balances will be reviewed in general rate cases. In the event that an electric utility does not have a rate case within a five-year period, the commission, on its own motion or on the motion of the commission's Office of Regulatory Affairs, the Office of Public Utility Counsel, or any affected person, may initiate a proceeding to review the electric utility's decommissioning cost study and plan, and the balance of the trust.

(iv) An electric utility shall perform, or cause to be performed, a study of the decommissioning costs of each nuclear generating unit that it owns or in which it leases an interest. A study or a redetermination of the previous study shall be performed at least every five years. The study or redetermination should consider the most current information reasonably available on the cost of decommissioning. A copy of the study or redetermination shall be filed with the commission and copies provided to the commission's Office of Regulatory Affairs and the Office of Public Utility Counsel. An electric utility's most recent decommissioning study or redeterminations shall be filed with the commission within 30 days of the effective date of this subsection. The five year requirement for a new study or redetermination shall begin from the date of the last study or redetermination.

(G) Accruals credited to reserve accounts for self-insurance under a plan requested by an electric utility and approved by the commission. The commission shall consider approval of a self insurance plan in a rate case in which expenses or rate base treatment are requested for a such a plan. For the purposes of this section, a self insurance plan is a plan providing for accruals to be credited to reserve accounts. The reserve accounts are to be charged with property and liability losses which occur, and which could not have been reasonably anticipated and included in operating and maintenance expenses, and are not paid or reimbursed by commercial insurance. The commission will approve a self insurance plan to the extent it finds it to be in the public interest. In order to establish that the plan is in the public interest, the electric utility must present a cost benefit analysis performed by a qualified independent insurance consultant who demonstrates that, with consideration of all costs, self-insurance is a lower-cost alternative than commercial insurance and the ratepayers will receive the benefits of the self insurance plan. The cost benefit analysis shall present a detailed analysis of the appropriate limits of self insurance, an analysis of the appropriate annual accruals to build a reserve account for self insurance, and the level at which further accruals should be decreased or terminated.

(H) Postretirement benefits other than pensions (known in the electric utility industry as "OPEB"). For ratemaking purposes, expense associated postretirement benefits other than pensions (OPEB) shall be treated as follows:

(i) OPEB expense shall be included in an electric utility's cost of service for ratemaking purposes based on actual payments made.

(ii) An electric utility may request a one-time conversion to inclusion of current OPEB expense in cost of service for

ratemaking purposes on an accrual basis in accordance with generally accepted accounting principles (GAAP). Rate recognition of OPEB expense on an accrual basis shall be made only in the context of a full rate case.

(iii) An electric utility shall not be allowed to recover current OPEB expense on an accrual basis until GAAP requires that electric utility to report OPEB expense on an accrual basis.

(iv) For ratemaking purposes, the transition obligation shall be amortized over 20 years.

(v) OPEB amounts included in rates shall be placed in an irrevocable external trust fund dedicated to the payment of OPEB expenses. The trust shall be established no later than six months after the order establishing the OPEB expense amount included in rates. The electric utility shall make deposits to the fund at least once per year. Deposits on the fund shall include, in addition to the amount included in rates, an amount equal to fund earnings that would have accrued if deposits had been made monthly. The funding requirement can be met with deposits made in advance of the recognition of the expense for ratemaking purposes. The electric utility shall, to the extent permitted by the Internal Revenue Code, establish a postretirement benefit plan that allows for current federal income tax deductions for contributions and allows earnings on the trust funds to accumulate tax free.

(vi) When an electric utility terminates an OPEB trust fund established pursuant to clause (v) of this subparagraph, it shall notify the commission in writing. If excess assets remain after the OPEB trust fund is terminated and all trust related liabilities are satisfied, the electric utility shall file, for commission approval, a proposed plan for the distribution of the excess assets. The electric utility shall not distribute any excess assets until the commission approves the disbursement plan.

(2) Expenses not allowed. The following expenses shall never be allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended promoting political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of electricity;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A)-(F) of this paragraph;

(H) payments, except those made under an insurance or risk-sharing arrangement executed before the date of the loss, made to cover costs of an accident, equipment failure, or negligence at an electric utility facility owned by a person or governmental body not selling power within the State of Texas;

(I) costs, including, but not limited to, interest expense, of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission in a case where the electric utility has put bonded rates into effect, or when the electric utility has otherwise been ordered to make refunds;

(J) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including but not limited to executive salaries, advertising expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each electric utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the electric utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low because of changes affecting opportunities for investment, the money market, and business conditions generally.

(B) The commission shall consider efforts by the electric utility to comply with the statewide integrated resource plan, the efforts and achievements of the electric utility in the conservation of resources, the quality of the electric utility's services, the efficiency of the electric utility's operations, and the quality of the electric utility's management, along with other applicable conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the electric utility to attract new capital. The rate of return must be high enough to attract necessary capital but need not go beyond that. In each case, the commission shall consider the electric utility's cost of capital, which is the weighted average of the costs of the various classes of capital used by the electric utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt at the time of issuance, plus adjustments for premiums, discounts, and refunding and issuance costs.

(ii) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital shall be based upon a fair return on its market value.

(II) Preferred stock capital. The cost of preferred stock capital is the actual cost of preferred stock at the time of issuance, plus an adjustment for premiums, discounts, and refunding and issuance costs.

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as set out in subparagraphs (A) - (F) of this paragraph.

(A) Original cost, less accumulated depreciation, of electric utility plant used by and useful to the electric utility in providing service.

(i) Original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use,

whether by the electric utility which is the present owner or by a predecessor.

(ii) Reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation shall be computed on a straight line basis or by such other method approved under subsection (b)(1)(B) of this section over the expected useful life of the item or facility.

(iii) Payments to affiliated interests shall not be allowed as a capital cost except as provided in the Public Utility Regulatory Act §36.058.

(B) Working capital allowance to be composed of, but not limited to the following:

(i) Reasonable inventories of materials, supplies, and fuel held specifically for purposes of permitting efficient operation of the electric utility in providing normal electric utility service. This amount excludes appliance inventories and inventories found by the commission to be unreasonable, excessive, or not in the public interest.

(ii) Reasonable prepayments for operating expenses. Prepayments to affiliated interests shall be subject to the standards set forth in the Public Utility Regulatory §36.058.

(iii) A reasonable allowance for cash working capital. The following shall apply in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for electric utilities shall in no event be greater than one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II) For electric cooperatives, river authorities, and investor-owned electric utilities that purchase 100% of their power requirements, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments will be considered a reasonable allowance for cash working capital.

(III) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), and (V) of this clause.

(IV) For all investor-owned electric utilities a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a-) The lead-lag study will use the cash method; all non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return (including interest on long- term debt and dividends on preferred stock), will not be considered.

(-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.

(-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the electric utility.

(-d-) All funds received by the electric utility except electronic transfers shall be considered available for use no later than the business day following the receipt of the funds in any repository of the electric utility (e.g., lockbox, post office box, branch office). All funds received by electronic transfer will be considered available the day of receipt.

(-e-) For electric utilities the balance of cash and working funds included in the working cash allowance calculation shall consist of the average daily bank balance of all non-interest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense shall be calculated by measurement of the interval between the midpoint of the annual service period and the actual payment date of the electric utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount shall be included in rate base.

(V) If cash working capital is required to be determined by the use of a lead-lag study under the previous subclause and either the electric utility does not file a lead lag study or the electric utility's lead-lag study is determined to be so flawed as to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, an amount of cash working capital equal to negative one-eighth of operations and maintenance expense including fuel and purchased power will be presumed to be the reasonable level of cash working capital.

(C) Deduction of certain items which include, but are not limited to, the following:

(i) accumulated reserve for deferred federal income taxes;

(ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(iii) contingency and/or property insurance reserves;

(iv) contributions in aid of construction;

(v) customer deposits and other sources of cost-free capital;

(D) Construction work in progress (CWIP). The inclusion of construction work in progress is an exceptional form of rate relief. Under ordinary circumstances the rate base shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission will include construction work in progress in rate base to the extent that:

(i) the electric utility has proven that:

(I) the inclusion is necessary to the financial integrity of the electric utility; and

(II) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress shall not be allowed for any portion of a major project which the electric utility has failed to prove was efficiently and prudently planned and managed; or

(ii) for a project ordered by the commission under §25.199 of this title (relating to Transmission Planning, Licensing and Cost-recovery for Utilities within the Electric Reliability Council of Texas), if the commission determines that conditions warrant the inclusion of CWIP in rate base, the project is being efficiently and prudently planned and managed, and there will be a significant delay between initial investment and the initial cost recovery for a transmission project.

(E) Self-insurance reserve accounts. If a self insurance plan is approved by the commission, any shortages to the reserve account will be an increase to the rate base and any surpluses will be a decrease to the rate base. The electric utility shall maintain appropriate books and records to permit the commission to properly review all charges to the reserve account and determine whether the charges being booked to the reserve account are reasonable and correct.

(F) Requirements for post test year adjustments.

(i) Post test year adjustments for known and measurable rate base additions (increases) to historical test year data will be considered only as set out in subclauses (I)-(IV) of this clause.

(I) Where the addition represents plant which would appropriately be recorded:

(-a-) for investor-owned electric utilities in FERC account 101 or 102;

(-b-) for electric cooperatives, the equivalent of FERC accounts 101 or 102.

(II) Where each addition comprises at least 10% of the electric utility's requested rate base, exclusive of post test year adjustments and CWIP.

(III) Where the plant addition is deemed by this commission to be in-service before the rate year begins.

(IV) Where the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably follow as a consequence of the post test year adjustment being proposed.

(ii) Each post test year plant adjustment will be included in rate base at:

(I) the reasonable test year-end CWIP balance, if the addition is constructed by the electric utility; or,

(II) the reasonable price, if the addition represents a purchase, subject to original cost requirements, as specified in Public Utility Regulatory Act §36.053.

(iii) Post test year adjustments for known and measurable rate base decreases to historical test year data will be allowed only when clause (i)(IV) of this subparagraph and the criteria described in subclauses (I) and (II) of this clause are satisfied.

(I) The decrease represents:

(-a-) plant which was appropriately recorded in the accounts set forth in clause (i)(I) of this subparagraph;

(-b-) plant held for future use;

(-c-) CWIP (mirror CWIP is not considered CWIP); or

(-d-) an attendant impact of another post test year adjustment.

(II) Plant that has been removed from service, mothballed, sold, or removed from the electric utility's books prior to the rate year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501302
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: April 13, 2005
Proposal publication date: October 29, 2004
For further information, please call: (512) 936-7223

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 216. CONTINUING EDUCATION

22 TAC §§216.1 - 216.3, 216.5

The Board of Nurse Examiners (Board) adopts amendments without changes to 22 Texas Administrative Code §§216.1 - 216.3 and §216.5, concerning Continuing Education. The original proposal was published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 631). The adoption of these amendments will consolidate the Continuing Education (CE) rules applicable to all nurses into one section and will complete the consolidation of the rules for the former Board of Vocational Nurse Examiners and Board of Nurse Examiners under one board.

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These amendments implement House Bill 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted amendments is the adopted repeal of Chapter 237 which addressed continuing education for licensed vocational nurses only. Chapter 216 will be applicable to all nurses. These amendments are for the purpose of preventing conflicting rules and consolidating the rules applicable to all nurses under Part 11 (Board of Nurse Examiners) of the Texas Administrative Code.

No comments were received in response to the proposal of these amendments.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption of the amendments implement Texas Occupations Code §§301.303 - 301.305.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501248
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: April 11, 2005
Proposal publication date: February 11, 2005
For further information, please call: (512) 305-6823

♦ ♦ ♦

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.1, §217.4

The Board of Nurse Examiners (Board) adopts without changes amendments to 22 Texas Administrative Code §217.1 and §217.4, concerning Licensure, Peer Assistance and Practice. The original proposal was published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 633).

Section 217.1 specifically addresses "Definitions" and §217.4 is entitled "Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction." The adopted amendment to §217.1 includes the definition of "credentialing evaluation services (CES)" and deletes the definition of the Commission on Graduates of Foreign Nursing Schools (CGFNS). Section 217.4 broadens the acceptable verification organizations and availability of organizations that can provide credential evaluation services (CES) of foreign-educated nurses. As a result, the time period in obtaining the necessary information requested from the credentialing organizations will be shorter and will provide equal and some enhanced services. By requiring credentials from these organization, the CGFNS certification program requirement would become unnecessary and, therefore, eliminated.

No comments were received in response to the proposed amendments.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption of the amendments will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501252
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: April 11, 2005
Proposal publication date: February 11, 2005
For further information, please call: (512) 305-6823

♦ ♦ ♦

CHAPTER 220. NURSE LICENSURE COMPACT

22 TAC §220.2

The Board of Nurse Examiners (Board) adopts without changes amendments to 22 Texas Administrative Code §220.2 (Issuance of a License by a Compact Party State), concerning Nurse Licensure Compact. The original proposal was published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 634). Texas joined the Nurse Licensure Compact on January 1, 2000. This compact allows nurses licensed in Texas to practice in member states without having to apply for each member states' individual license. This adopted amendment will implement the standard passed by the Nurse Licensure Compact Administrators (NLCA) requiring all nurse applicants for initial licensure in a compact home state to have passed the NCLEX or its predecessor examination in order to obtain a multistate privilege.

No comments were received in response to the amendment.

This adopted amendment is pursuant to the authority of Texas Occupations Code §§301.151, 301.152 and 304.003 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the amendment will further implement Texas Occupations Code Chapter 304.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501249
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: April 11, 2005
Proposal publication date: February 11, 2005
For further information, please call: (512) 305-6823

♦ ♦ ♦

PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 237. CONTINUING EDUCATION

SUBCHAPTER A. DEFINITIONS

22 TAC §237.1

The Board of Nurse Examiners adopts the repeal of 22 Texas Administrative Code Chapter 237, concerning Continuing Education, and specifically Subchapter A (Definitions), §237.1. The proposed repeal was published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 645). The other subchapter in this chapter is being adopted without changes for repeal concurrently with this subchapter.

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are adopted amendments to Chapter 216 (Continuing Education) which will be applicable to all nurses. This repeal is for the purpose of preventing conflicting rules and consolidating the rules applicable to all nurses under Part 11 (Board of Nurse Examiners) of the Texas Administrative Code.

No comments were received in response to the proposal.

This adopted repeal is pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the adopted repeal will implement Texas Occupations Code §§301.303 - 301.305.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501238
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: April 11, 2005
Proposal publication date: February 11, 2005
For further information, please call: (512) 305-6823

♦ ♦ ♦

SUBCHAPTER B. CONTINUING EDUCATION

22 TAC §§237.11 - 237.23

The Board of Nurse Examiners adopts the repeal of 22 Texas Administrative Code Chapter 237, concerning Continuing Education, and specifically Subchapter B (Continuing Education), §§237.11 - 237.23. The proposed repeal was published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 645). The other subchapter in this chapter is being adopted without changes for repeal concurrently with this subchapter.

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are adopted amendments to Chapter 216 (Continuing Education) which will subsequently be applicable to all nurses. This repeal is for the purpose of preventing conflicting rules and consolidating the rules applicable to all nurses under Part 11 (Board of Nurse Examiners) of the Texas Administrative Code.

No comments were received in response to the proposal.

This adopted repeal is pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the adopted repeal will implement Texas Occupations Code §§301.303 - 301.305.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501240
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: April 11, 2005
Proposal publication date: February 11, 2005
For further information, please call: (512) 305-6823

♦ ♦ ♦

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.72

The Texas State Board of Public Accountancy adopts an amendment to §501.72 concerning Contingency Fees without changes to the proposed text as published in the January 28, 2005 issue of the *Texas Register* (30 TexReg 355). The text of the rule will not be republished.

The amendment to §501.72 defines the term "testifying accounting expert". By adoption of an interpretive comment, the amendment clarifies how a "consulting accounting expert" may become a "testifying accounting expert" and, further, that an accounting expert may not accept contingent fees for part of an engagement and a set fee for part of the same engagement.

The amendment functions to improve the public understanding of how to determine whether an accounting expert is performing as a testifying accounting expert or a consulting accounting expert; furthermore, that testifying accounting experts are not permitted to accept contingent fee arrangements, either in whole or in part for an engagement.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501293
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: April 13, 2005
Proposal publication date: January 28, 2005
For further information, please call: (512) 305-7848

♦ ♦ ♦

CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10 concerning Board Committees without changes to the proposed text as published in the January 28, 2005 issue of the *Texas Register* (30 TexReg 356). The text of the rule will not be republished.

The amendment to §505.10 clarifies the status of each of the Board's standing committees as either policy-making or working; further, that committees designated as working committees serve to make recommendations to the board's policy-making committees concerning changes in the rules, opinions, and policies related to the functional area supervised by the working

committee. The amendment further clarifies that the Executive Committee shall also be the board's audit committee; and that the technical standards review committee and the major case enforcement committee are given the responsibility to make recommendations to the Board's policy-making committees concerning proposal changes in Board rules, opinions and policy related to technical standards and major case enforcement.

The amendment functions to clarify each standing committee's status as either a working or policy-making committee; that the technical standards review committee and major case enforcement committee are given the responsibility to make recommendations to the Board's policy-making committees concerning proposed changes in Board rules, opinions and policy related to technical standards and major case enforcement; and, in accordance with the Public Accountancy Act, that only Board members serve on policy-making committees.

No comments were received regarding adoption of this rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.1525 of the Public Accountancy Act which authorizes the Board to have working committees and policy-making committees.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501294
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: April 13, 2005
Proposal publication date: January 28, 2005
For further information, please call: (512) 305-7848

♦ ♦ ♦

22 TAC §505.12

The Texas State Board of Public Accountancy adopts an amendment to §505.12 concerning Enforcement Committees without changes to the proposed text as published in the January 28, 2005 issue of the *Texas Register* (30 TexReg 358). The text of the rule will not be republished.

The amendment to §505.12 deletes "Member Recusals" from the title of the rule; deletes subsection (b), which states that a member of an enforcement committee may not participate in discussions before the committee in which the member has a personal or financial interest; re-letters existing subsection (a) to become new subsection (b); and, adopts new subsection (a), providing that the Board's behavioral enforcement committee, the technical standard's review committee, the major case enforcement committee and the constructive enforcement committee shall each be one of the board's enforcement committees.

The amendment functions to provide for greater protection of the public's interest in the event a member has a personal or financial interest in a matter before any of the Board's committees. The public benefits expected as a result of adopting the amendment will be: (1) clarification that the section defines Enforcement Committees; (2) deletion of existing subsection (b) of Section 505.12 in order that Section 505.13, clarifying that a member of any board committee may not participate in the discussion and may not vote on an issue before the committee in which the member has a personal or financial interest, may be adopted; (3) the re-lettering of existing subsection (a), stating that a member of the board and an enforcement committee shall recuse himself from any considered by that enforcement committee; and, (4) the enactment of new subsection (a) clarifying that the Board's behavioral enforcement committee, the technical standards review committee, the major case enforcement committee, and the constructive enforcement committee shall each be one of the board's enforcement committee.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501295
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: April 13, 2005
Proposal publication date: January 28, 2005
For further information, please call: (512) 305-7848

♦ ♦ ♦

22 TAC §505.13

The Texas State Board of Public Accountancy adopts new rule §505.13 concerning Board Committee Member Recusals without changes to the proposed text as published in the January 28, 2005 issue of the *Texas Register* (30 TexReg 359). The text of the rule will not be republished.

The new §505.13 prohibits Board committee members from participating in the discussion of and voting on an issue before a Board committee in which the committee member has a personal or financial interest.

The new rule functions by creating less potential for conflict of interest allegations in the event a Board committee member has a personal or financial interest in a matter before the Board committee. This rule will result in more transparent Board operations and greater disclosure to the public.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501296
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: April 13, 2005
Proposal publication date: January 28, 2005
For further information, please call: (512) 305-7848

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

The Texas Commission on Environmental Quality (commission) adopts the amendments to §§115.222, 115.223, 115.240, 115.242, 115.243, 115.245, 115.248, and 115.249. The amendments to §§115.222, 115.240, and 115.245 are adopted *with changes* to the proposed text as published in the December 3, 2004, issue of the *Texas Register*. The amendments to §§115.223, 115.242, 115.243, 115.248, and 115.249 are adopted *without changes* to the proposed text as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11271) and will not be republished.

The commission will submit the amendments and revised state implementation plan (SIP) narrative to the United States Environmental Protection Agency (EPA) as revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopted the Stage II rules and SIP narrative on October 16, 1992 (revised on November 10, 1993, and on November 22, 2002), to satisfy a requirement of the Federal Clean Air Act amendments of 1990, §182(b)(3) (42 United States Code (USC), §7511a(b)(3)). The original rules followed the California Air Resources Board (CARB) certification procedures for vapor recovery equipment. The CARB is currently implementing an enhanced vapor recovery (EVR) program, and therefore, no longer certifies non-EVR vapor recovery systems. In lieu of incorporating the CARB EVR program, the commission adopted requirements for more frequent testing of vapor recovery systems at gasoline dispensing facilities and for installing or retrofitting Stage II systems in order to be compatible with onboard refueling vapor recovery (ORVR) equipment required on newer vehicles. In order to provide additional ORVR compatibility options to owners and operators of gasoline dispensing facilities, the commission is expanding the definition of "Onboard refueling vapor recovery compatible." Additionally, the commission is adopting language that will enhance the commission's ability to approve both Stage I and Stage II vapor recovery systems and components certified by independent third parties. The commission is also making changes to the rule language, which should result in requirements that are easier to understand and enforce.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking, except after §115.242(2)(F), the phrase "or third-party certification" is added after every reference to a CARB executive order in order to allow for vapor recovery equipment or systems approved for use by the executive director outside of the CARB certification program. Additionally, throughout this rulemaking, administrative changes to the use of the word "shall" in the rule language are made as needed to conform to the drafting guidelines in the *Texas Legislative Council Drafting Manual*, October 2002. In cases where a requirement is a condition precedent, the word "must" is substituted. In other cases, present tense is substituted when this construction is clearer. In the cases where an obligation is placed on a person by the rule, "shall" is retained. Justification for these changes will not be discussed further in this preamble other than to point out where each change is made.

Subchapter C, Division 2, Stage I Vapor Recovery

The amendment to §115.222, Control Requirements, adds "or third-party certification" to §115.222(5) and changes "shall" to "must" in §115.222 (1), (10), and (11), as previously discussed in this preamble. In §115.222(7), the word "tank" is inserted to state more clearly which vapors are covered by the provision. In §115.222(9), the phrase "combustible gas detector" is being replaced with the term "hydrocarbon gas analyzer." The revision to §115.222(12) clarifies that the exemption limits in §115.227 do not establish applicability to the rule. At proposal, the requirement was rewritten to state that if a motor vehicle fuel dispensing facility does not meet an exemption in §115.227, then the owner or operator has 120 days to come into compliance with the provisions of this division. At adoption, the proposed language is changed to clarify that exceeding a throughput level that pertains to an exemption in §115.227 means that exemption no longer applies to the facility. Also, in §115.222(12), the word "subsection" is replaced with "section" to conform to Texas Register guidelines.

The amendment to §115.223, Alternate Control Requirements, removes the language referencing §115.910 for demonstrating an alternate control requirement (ACR) and replaces it with language comparable to that given in §115.243, which regulates ACRs for Stage II. This amendment will make the approval of new Stage I equipment easier and more commensurate with the approval process in place for Stage II equipment.

Subchapter C, Division 4, Stage II Vapor Recovery

The amendment to §115.240, Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment, revises the definition of "Onboard refueling vapor recovery compatible." Following the promulgation of the last Stage II rule revision (November 2002), new vapor recovery technologies have been developed that are limited by the prior definition. The new definition considers any vapor recovery system certified by CARB as ORVR compatible, regardless of whether it is vacuum assisted, to also be ORVR compatible in Texas. In addition, a system certified, using test methods approved by the executive director, by an independent third-party evaluator to maintain an overall efficiency of at least 95% while dispensing fuel to both ORVR-equipped and non-ORVR-equipped vehicles may be considered ORVR compatible in Texas. The use

of the acronym "ORVR" in the title is also deleted to conform to agency guidelines. The amendment also changes "shall" in §115.240(a) to present tense, as previously discussed in this preamble. At adoption, based on public comment, the definition of "major system replacement or modification," which was added to §115.245(1)(D) at proposal, is moved to this section as §115.240(a)(1), and the subsequent definitions are renumbered. At adoption to conform to Texas Register guidelines, the phrase "the California Air Resources Board" in the proposed language in §115.240(a)(3) is replaced by the acronym "CARB" because the language added at adoption as §115.240(a)(1) defines the acronym earlier in the same section. The amendment to §115.240(b) removes the phrase "in the following figure" and replaces it with "contained in this subsection" to conform to Texas Register guidelines. At adoption to conform to Texas Register guidelines, the phrase "California Air Resources Board" in the existing language in §115.240(b) is removed and the acronym "CARB" retained because the language added at adoption as §115.240(a)(1) defines the acronym earlier in the same section.

The amendment to §115.242, Control Requirements, adds "or third-party certification" to §115.242(2), (3), (3)(B) and (G), and (12)(C); changes "shall" to "must" in §115.242(2), (2)(A) - (F), (5), (6), and (9); changes "shall" to "may" in §115.242(1)(A) and (B); and changes "shall" to present tense in §115.242(2)(B) and (D), as previously discussed in this preamble. The amendment removes "vacuum assist" from §115.242(1)(C) because this distinction is no longer necessary because CARB determined that all previously certified balance systems are ORVR compatible. In §115.242(2), a grammatical error is corrected by inserting "and" into a series of sections. The amendment to §115.242(2)(C) removes the phrase "one-eighth of an" and replaces it with "1/8" to conform to Texas Register guidelines. In §115.242(2)(D), the provision for the minimum size of vapor piping is rephrased to be consistent with the rule drafting guideline. Additionally, the phrase "and shall slope towards the storage tank at all points" is added to §115.242(2)(E) to augment the requirements for riser piping. This language ensures that the piping within and below the dispenser will be free of liquid traps. The words "or control" is added to §115.242(3)(H) to cover newer vapor recovery system designs that are not necessarily considered "vapor processors." In §115.242(6), language concerning the removal of out-of-order tags and returning equipment to service is changed to be more understandable. The revision to §115.242(10) clarifies that the exemption limits in §115.247 do not establish applicability to the rule. The requirement has been rewritten to state that if a motor vehicle fuel dispensing facility does not meet an exemption in §115.247, then the owner or operator has 120 days to come into compliance with the provisions of this division. In §115.242(12), the phrase "with jurisdiction" is inserted after the phrase "local air pollution program" to add specificity. In §115.242(12)(C), the word "number(s)" is added after the phrase "CARB Executive Order" to show that the entire CARB Executive Order does not need to be submitted.

The only amendment to §115.243(2), Alternate Control Requirements, is a change from the word "verified" to "certified." This change is needed both to strengthen the ACRs and to make this language consistent with the rest of the rule.

The amendment to §115.245, Testing Requirements, reconfigures the entire section, but results in only a minor additional requirement. Language is reconfigured to make §115.245(1) applicable only to initial or full system testing; §115.245(2) applicable to only annual testing; and new §115.245(3) applicable only to pretest notification and reporting of test results. At adoption, based on public comment, the definition of "major system replacement or modification," which was added to §115.245(1)(D) as part of the reconfiguration, is moved to §115.240(1) as discussed previously in this preamble. The amendment to §115.245(2) removes "twelve" and replace it with "12" to conform to Texas Register guidelines. The provisions in §115.245(3) are broken out of §115.245(2) and modified because the current language in this section is redundant, confusing, and somewhat difficult to enforce. The remaining paragraphs are renumbered. Other changes add "or third-party certification" to §115.245(1)(A)(i) and (C) and change "shall" to "must" in §115.245(1), (1)(A)(i) - (iv), (1)(B) and (C), (2), (5), and (6), as previously discussed in this preamble. In §115.245(1), the word "commission's" is added before the title "Vapor Recovery Test Procedure Handbook" to add specificity. Additionally, the changes add the applicable Texas test procedure number after the description of each required test and add test time as a required item for pretest notifications in new §115.245(3). At adoption, new wording is added to renumbered §115.245(4) to make it clear that only test modifications that have been approved by the executive director may be used.

The amendment to §115.248, Training Requirements, adds "and testing" to §115.248(3)(C) to better ensure that testing requirements are included in the curriculum of approved Stage II training courses. The commission is changing "shall" to the present tense in §115.248(1) and (4)(B)(ii) and changing "shall" to "must" in §115.248(1), as previously discussed in this preamble. The proposed amendment also corrects a typographic error in §115.248(4)(B)(ii).

The amendment to §115.249, Counties and Compliance Schedules, removes "vacuum assist" from §115.249(c), (c)(1), and (c)(2). This distinction is no longer necessary because CARB determined that all previously certified balance systems are ORVR compatible.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted amendments do not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A "major environmental rule" is a rule which is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this adopted rulemaking action is to correct errors and change definitions in the rules to match emerging control technologies. The adopted amendments will provide additional ORVR compatibility options to owners and operators of gasoline dispensing facilities by expanding the definition of "Onboard refueling vapor recovery compatible" to include new technologies. Additionally, the commission is adopting language that will enhance the commission's ability to approve vapor recovery systems and components certified by independent third parties. The commission is also making changes to the rule language, which should result in requirements that are easier to understand and enforce. The adopted amendments to Chapter 115 do not increase the stringency of existing rules and will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the

public health and safety of the state or a sector of the state. The adopted amendments are primarily procedural. No additional fiscal impacts are expected from these amendments to those gasoline dispensing facilities that are currently required to have Stage I or Stage II vapor recovery systems installed.

In addition, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted amendments do not meet any of the four applicability requirements. Specifically, the adopted amendments implement requirements of 42 USC, §7511a(b)(3), (c), and (d) and Texas Health and Safety Code (THSC), §§382.002, 382.011, 382.012, 382.019, and 382.208.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this adopted rulemaking action and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The analysis indicates this action is reasonably being taken to fulfill an obligation mandated by federal law, and therefore is exempt under Texas Government Code, §2007.003(b)(4). Specifically, this adopted rulemaking action amends the Stage I and Stage II gasoline vapor recovery rules and SIP narrative required under 42 USC, §7511a(b)(3), (c), and (d). The specific purpose of the adopted rulemaking is to provide additional ORVR compatibility options to owners and operators of gasoline dispensing facilities by expanding the definition of "Onboard refueling vapor recovery compatible" to include new technologies. Additionally, the commission is adopting language that will enhance the commission's ability to approve vapor recovery systems and components certified by independent third parties. The commission is also making changes to the rule language, which should result in requirements that are easier to understand and enforce.

Nevertheless, the commission further evaluated this adopted rulemaking action and performed an analysis of whether this action would constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these adopted amendments is to continue to satisfy federal requirements for vapor recovery from gasoline dispensing facilities in nonattainment areas of the state. Promulgation and enforcement of these adopted amendments would be neither a statutory or constitutional taking of private real property. Specifically, the adopted amendments do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted regulations. In other words, these amendments are adopted to continue to meet the requirements of 42 USC, §7511a(b)(3) and THSC, §382.019 and §382.208, but in a less financially burdensome manner on owners and operators of gasoline dispensing facilities. The adopted amendments will enhance the commission's ability to approve vapor recovery systems and components certified by independent third parties and allow the use of new technologies. An alternative would be to implement the CARB EVR program in Texas at a substantially increased cost to facility owners and operators in order to meet the requirements of the Federal Clean Air Act. Therefore, these adopted amendments will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized, and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

PUBLIC COMMENT

A public hearing on this proposal was held in Austin, Texas, on January 3, 2005, and oral comments were received from Husky Corporation (Husky). The public comment period ended at 5:00 p.m. on January 3, 2005. Written comments were submitted by the Sierra Club, Houston Regional Group (HSC); Valero Energy Corporation (Valero); Technology Resources International, Inc. (TRI); ARID Technologies, Inc. (ARID); EPA Region VI; Dresser Wayne, Inc. (DW); the American Petroleum Institute (API); and ExxonMobil Downstream (ExxonMobil). Valero, TRI, ARID, EPA Region VI, and DW indicated that they supported the rules. HSC opposed the adoption of the rules. ExxonMobil did not indicate whether it was for or against the adoption of the rule amendments, but provided specific comments on the existing rules. API indicated that its members support the rule amendments, but opposed part of the existing rules.

RESPONSE TO COMMENTS

Comment

HSC commented that the proposal indicated that the CARB is implementing an EVR program and no longer certifying non-EVR vapor recovery systems, but that the proposal did not provide the public with information on what an EVR program is or on why the commission is not doing the same. HSC commented that the commission must document the effectiveness of the proposal and why it is better than an EVR program. The HSC stated that the citizens of Texas deserve the best and most comprehensive protection from air pollution equal to that in California. HSC requested that the commission withdraw the proposal and provide information on EVR programs and why the proposed amendments are better.

RESPONSE

CARB's EVR program was initiated in 1999 in response to legal action brought against the State of California by the National Resources Defense Council, the Coalition for Clean Air, and others. CARB claims that EVR will produce a higher vapor recovery system efficiency than non-EVR systems (from 95% to 98%). EVR requires all systems to be ORVR compatible, possess in-station monitoring equipment, utilize only single-hose dispensers, and have minimal post-fueling drips and liquid retention/spitback. The commission, sharing CARB's concerns over the compatibility of vapor recovery systems with federally mandated ORVR systems installed on new automobiles, promulgated requirements for ORVR compatibility in the 2002 Stage II rule revision (November 6, 2002). In fact, the ORVR compatibility compliance date of April 1, 2005, for new systems in Texas is a full year earlier than that required under CARB's EVR program. However, it is the commission's position that the additional cost to owners and operators of vapor recovery systems is unwarranted for the minor increase in overall system efficiency gained by the full CARB EVR program. CARB's own estimates indicate that EVR will have an average total fixed cost of nearly $46,000 per facility (August 2002). CARB has also calculated an overall EVR cost effectiveness of $4.85 per pound of reactive organic gases (ROG) reduced (originally calculated at approximately $1.80 per pound). The commission has taken other steps to increase the operational efficiency of vapor recovery systems in Texas, including an increase in the frequency of system testing, a modification of the agency's investigation strategy to allow for more on-site test observations, and additional outreach to vapor recovery system testers.

The commission agrees that the citizens of Texas deserve better air quality. For this reason the commission strives to ensure that the Texas program meets or exceeds the standards set forth by the EPA. The commission makes no claims that its current vapor recovery program is better than California's EVR program. However, the commission does maintain that the costs of EVR are prohibitive and excessive when compared to other volatile organic compound (VOC) control measures currently being implemented. No change was made in response to this comment.

Comment

The HSC commented that it is not clear in the proposal how the commission will set up third-party certifications. In addition, HSC commented that the commission must define the phrases "qualified independent testing organization," "code or standard or practice acceptable to the executive director," and "which has been developed by a nationally recognized agency, association, or independent testing laboratory" that are used in the amendment to §115.223(2).

RESPONSE

Third-party certification of petroleum-related equipment is a long-standing, nationally recognized process. Many universities and public and private organizations, including Underwriters Laboratories, Inc., (UL) and the National Work Group on Leak Detection Evaluations (NWGLDE), conduct or evaluate independent evaluations of equipment and/or services. UL has been testing and certifying products and services for over 100 years. The NWGLDE is a group of state and EPA representatives who review leak detection system evaluations to determine if each evaluation was performed in accordance with an acceptable leak detection test method protocol and ensure that the leak detection system meets EPA and/or other applicable regulatory performance standards. The NWGLDE reviews evaluations prepared by a number of third-party testers/evaluators and seeks to ensure that EPA-approved methodologies were followed.

The commission's third-party vapor recovery equipment certification program strives to ensure it is no less stringent than the examples given in the previous paragraph. All third-party evaluations must be performed by a nationally recognized entity using CARB's pre-EVR certification standards. This entity must provide proof that it has the knowledge, experience, and staff necessary to perform a comprehensive evaluation. To date, the commission has approved two third-party evaluators for vapor recovery equipment certifications: Ken Wilcox Associates, Inc. (KWA) and TRI. Since 1989, KWA has conducted hundreds of different evaluations for almost every manufacturer of leak detection equipment. It has been contracted by the EPA, the API, the Federal Aviation Administration, and others to perform such evaluations. TRI provides such services as technology planning, evaluation, and development, regulatory advocacy, and litigation support.

In light of this information, the commission maintains that the addition of the definitions requested by HSC in §115.10 is not necessary. No change was made in response to this comment.

Comment

HSC commented that the commission must require specific training for third-party certifiers under §115.248.

RESPONSE

Requiring additional training for individuals, companies, or organizations involved in third-party testing and evaluation of vapor recovery equipment would not be consistent with other third-party certification programs created by the commission. Moreover, it is not evident that training of this type currently exists. The intent of these third-party certification programs is to ensure rigorous testing and evaluation of new equipment and methods without taxing the limited funds and resources available to the commission. Developing or requiring additional training would unnecessarily burden the commission with another level of bureaucratic oversight. No change was made in response to this comment.

Comment

HSC commented that the commission must define what is meant by maintaining "an overall efficiency of at least 95% while dispensing fuel" in §115.240.

RESPONSE

Vapor recovery systems approved for use in Texas must reduce the emissions of VOCs (i.e., gasoline vapors) to the atmosphere by 95%. The 95% efficiency criteria provided in the rule follows EPA's guidance. Under the Federal Clean Air Act, EPA is required to issue guidance, as appropriate, regarding the effectiveness of vapor recovery systems. EPA's guidance set a 95% efficiency level based on CARB's pre-EVR certification efficiency levels. The modification to the definition of "ORVR compatible" requires that any system or retrofit meet the required minimum overall system efficiency of 95% while fueling vehicles, even equipped with ORVR. No change was made in response to this comment.

Comment

HSC commented that the commission must be specific about how the rules will be easier to enforce, as was stated in the proposal.

RESPONSE

The changes to the rules that will result in requirements that are easier to understand and enforce include modifications to the subsection regulating the testing of vapor recovery systems. The current language of §115.245 is redundant and can be difficult to understand. The proposed language for §115.245 only introduces a minor new requirement regarding the inclusion of test time on pretest notifications. The main goal of the revision is to reconfigure the section to make paragraph (1) applicable to initial or full system testing, paragraph (2) applicable to annual testing, and new paragraph (3) applicable to pretest notification and reporting of test results. These changes will be easier to enforce because there will no longer be confusion about which citation applies to specific situations.

Comment

HSC commented that an addition should be made to §115.242(6) to require that verbal and written notifications be made to the commission's regional offices and to local air pollution control agencies with jurisdiction.

RESPONSE

It is unclear what this request would accomplish. The language in §115.242(6) requires verbal and written notification to the agency that originally tagged the equipment out of service. This ensures that the notifications are submitted to the appropriate agency. No change was made in response to this comment.

Comment

HSC commented that the definition for "major system replacement or modification" in §115.245(1)(D) should be moved to §115.240.

RESPONSE

The commission agrees and has amended the rule language accordingly.

Comment

Valero stated that it generally welcomes the amendments as a practical and economic method for owners and operators to comply and to maintain their systems at 95% efficiency. In discussing its reasons for support, Valero commented that it has been reported that the current ORVR penetration in Texas is at least 45%.

RESPONSE

The commission acknowledges the comments made by Valero and appreciates the support of the rulemaking. With respect to the estimated ORVR penetration rates referenced by Valero in its response, recent third-party certification testing conducted in the Houston area revealed an actual penetration rate of approximately 33%. While other areas of the state may be experiencing slightly higher or lower rates, the commission believes the observed rate is representative of current conditions.

Comment

Valero expressed its continued support for personnel certification for testing companies and would welcome the commission switching from a tester registry to an accredited certification program.

RESPONSE

The commission appreciates Valero's support of an accredited certification program for vapor recovery system testers. However, the commission is unable to implement these changes at this time. The Stage II vapor recovery program is authorized by THSC, Chapter 382, but there are no provisions in the THSC that explicitly authorize an occupational licensing or certification program for vapor recovery equipment installers, repair technicians, or testers. It is not commission practice to establish and regulate a licensing program without explicit statutory authority. The commission's licensing programs are based on the authority provided in Texas Water Code (TWC), Chapter 37, and there are no provisions in the TWC for the licensing of Stage II vapor recovery equipment testers. No change was made in response to this comment.

Comment

Valero expressed continued support for a thorough reconciliation of submitted test results and regulated Stage II Vapor Recovery facilities by the commission's regional offices. Detailed periodic analyses of the results received against the test results required would identify noncompliant facilities.

RESPONSE

The commission appreciates Valero's continued support of thorough reconciliation of Stage II test results. The commission's regional offices in Dallas/Fort Worth, El Paso, Beaumont, and Houston and local air pollution control agencies with jurisdiction currently conduct analyses of "test results received" versus "test results required." These offices maintain detailed data for each facility equipped with a vapor recovery system, including the type of Stage II system installed, the date of the initial or last triennial test, the date of the last successful annual test, the date of the last test observation performed by staff of the commission or local air pollution control agencies with jurisdiction, and the date of the last routine Stage II inspection. Since the commission modified its investigation strategy in 2002 to focus more resources on actual observation of annual and triennial testing, the amount and accuracy of data collected has increased significantly. The commission is now better able to determine which facilities are not conducting annual or triennial testing. If it is determined that a facility has not submitted test results by its due date, the facility is added to the commission's investigation target list. No change was made in response to this comment.

Comment

Valero commented that Stage I vapor recovery should be required of all retail fuel facilities in Texas. Valero stated that all of its company-operated facilities are so equipped.

RESPONSE

The commission greatly appreciates Valero's efforts to install Stage I controls on all company-operated facilities within the state. With regard to a statewide Stage I requirement, the commission is currently amending its regulations to reduce the Stage I threshold for facilities within Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties through early action compacts to address eight-hour ozone organized by local and regional authorities in those areas. In these counties, any facility dispensing 25,000 gallons of gasoline or more in any month will be required to install Stage I controls. Additionally, the commission has proposed rules to require facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to install Stage I if they dispense 10,000 gallons or more per month (those dispensing 125,000 per month are already required to have Stage I). There are currently no plans to expand the Stage I program further than these proposed amendments and it is beyond the scope of the current rulemaking to do so. No change was made in response to this comment.

Comment

TRI commented that the current requirement for ORVR compatibility needs to be modified to be more flexible. The current requirements only allow the use of technology available in the dispensing nozzle, rather than also allowing more versatile vent processing technology. The amendments will allow either CARB certification of ORVR compatibility or maintenance of a minimum overall system efficiency of 95%. TRI expressed support for allowing certification by parties other than CARB and commented that the CARB's new EVR rules are cost-prohibitive for some small companies that produce control equipment. TRI commented that an EVR program is not needed in Texas.

RESPONSE

The commission recognizes the comments provided by TRI and appreciates its support of the rule changes.

Comment

ARID commented that the expanded definition of ORVR compatibility allows for more hardware choices for facilities and that additional commercial options will likely yield lower capital equipment costs. ARID commented that independent third-party certification of equipment will provide benefits in several ways. ARID expressed strong support for the rulemaking.

RESPONSE

The commission acknowledges the comments provided by ARID and appreciates its support of the rulemaking.

Comment

DW expressed support for allowing third-party certification of equipment. DW commented that allowing additional sources of certification will help relieve the gridlock caused by overloading CARB to oversee national requirements, some of which are not applicable to the California market and that the additional avenues for certification will help alleviate the problems of long delays and high costs for obtaining CARB certifications.

RESPONSE

The commission acknowledges DW's support of the third-party certification program for Stage I and Stage II equipment and appreciates the overall support for the rule changes.

Comment

EPA commented that the amendments are primarily clarifications which will make the rules easier to understand and enforce. EPA commented that third-party certification is useful since CARB certifications of equipment now must meet a higher VOC capture efficiency than other states currently need and that the expanded definition of "Onboard refueling vapor recovery compatible" provides a much clearer description of what this system is expected to achieve. EPA offered support to Texas during the rulemaking process.

RESPONSE

The commission appreciates the EPA's acceptance of the Stage I and Stage II rule revisions and continues to value its support during this rulemaking process.

Comment

Husky expressed support for the rulemaking in oral testimony.

RESPONSE

The commission appreciates Husky's support of the rulemaking.

Comment

API expressed appreciation for the additional flexibility for third-party certification outside of the CARB process.

RESPONSE

The commission appreciates API's support of the Stage I and Stage II third-party certification program and of the increased flexibility it provides.

Comment

API commented that the existing requirement for ORVR compatible equipment is unnecessary and unjustified. API provided documentation which it claims indicates CARB's willingness to maintain pre-EVR certifications and to continue to test and certify pre-EVR equipment.

RESPONSE

The commission does not agree with API's assertion that ORVR compatibility requirements are unnecessary and unjustified. Incompatibility issues between ORVR-equipped vehicles and vacuum assist vapor recovery systems are an increasing threat to air quality in Texas. Vacuum assist vapor recovery systems comprise 92% of the systems installed in the state, while representing only 30% to 35% of the systems in California. CARB has addressed this issue by developing the EVR program (of which, ORVR compatibility represents a small portion of the estimated capital cost). Because the commission assessed the cost of the full EVR program as burdensome and not justified by the estimated amount of VOC reductions, the commission chose not to implement EVR in Texas. However, due to the increasing threat of emissions caused by incompatibility with ORVR-equipped vehicles, the commission acted in 2002 to require ORVR compatibility in order to protect the health of the citizens of Texas.

API references a November 1, 2004, compliance advisory from the San Luis Obispo Air Pollution Control District as an indication that CARB may continue to maintain pre-EVR certifications and even certify equipment to work with pre-EVR systems. The commission has received no word from CARB indicating its desire to continue certification under the pre-EVR standards. Regardless, the compliance advisory notes that facilities within the

San Luis Obispo Air Pollution Control District would not be exempt from ORVR compatibility requirements and would eventually be required to install a Phase I (Stage I) EVR system. This referenced "exemption" offered by San Luis Obispo Air Pollution Control District is more restrictive than the current Texas program. No change was made in response to this comment.

Comment

API commented that ORVR systems are a significant improvement over vapor recovery systems and that their effectiveness has been rigorously tested.

RESPONSE

API contends that the in-use effectiveness of ORVR systems is far superior to vapor recovery systems, but offers no data or references to bolster this claim. To date, the commission has received no detailed reports from any independent evaluations conducted to assess the reliability or in-use efficiency of ORVR systems. No change was made in response to this comment.

Comment

API commented that the commission should reevaluate the cost of implementing the ORVR requirement and show the specific cost per ton reduced.

RESPONSE

API's comment suggests that the commission attempted to gain additional VOC reductions and SIP credits with the implementation of the ORVR compatibility requirement. In truth, the ORVR compatibility requirement was implemented in order to maintain the efficiency level mandated by the SIP. Given the extremely high percentage of vacuum assist vapor recovery systems operating in Texas, not acting to require ORVR compatibility would have resulted in greater emissions.

A detailed cost analysis has been conducted by CARB. In August 2002 CARB calculated an overall cost-effectiveness of ORVR compatibility at $1.74 per pound of reactive organic gases (ROG) reduced. Per CARB's calculations, ORVR compatibility represents 17.5% of the daily ROG reductions achieved by its EVR program, but only represents approximately 6% of the annual cost of EVR. No change was made in response to this comment.

Comment

API and ExxonMobil commented that the commission should reexamine the ORVR compatibility requirement and that the requirement should be delayed until EPA has determined how it will handle the definition of widespread use.

RESPONSE

This request is beyond the scope of the current rule revision. Moreover, it is not clear when the EPA will finalize its definition and issue guidance to the states. Therefore, the commission will continue to ensure that Stage II systems in the 16 one-hour ozone nonattainment counties operate at the prescribed 95% efficiency level in the interim. No change was made in response to this comment.

Comment

ExxonMobil expressed support for making the requirements as flexible as possible.

RESPONSE

The commission appreciates ExxonMobil's support for flexibility within the regulations.

DIVISION 2. FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §115.222, §115.223

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, and §5.105, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendments implement TWC, §5.103, concerning Rules and §5.105, General Policy; and under THSC, §382.002, relating to Policy and Purpose, §382.011, General Powers and Duties, §382.012, State Air Control Plan, §382.017, Rules, and §382.208, Attainment Program.

§115.222. Control Requirements.

A vapor balance system will be assumed to comply with the specified emission limitation of §115.221 of this title (relating to Emission Specifications) if the following conditions are met:

(1) the container is equipped with a submerged fill pipe as defined in §101.1 of this title (relating to Definitions). The path through the submerged fill pipe to the bottom of the tank must not be obstructed by a screen, grate, or similar device whose presence would preclude the determination of the submerged fill pipe's proximity to the tank bottom while the submerged fill tube is properly installed;

(2) a vapor-tight return line is connected before gasoline can be transferred into the storage container;

(3) no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems;

(4) the vapor return line's cross-sectional area is at least one-half of the product drop line's cross-sectional area;

(5) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa) or in accordance with the facility's Stage II system as defined in the California Air Resources Board (CARB) Executive Order(s) or third-party certification for the facility;

(6) in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa);

(7) after unloading, the tank-truck tank is kept vapor-tight until the vapors in the tank-truck tank are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation;

(8) the gauge pressure in the tank-truck tank does not exceed 18 inches of water (4.5 kPa) or vacuum exceed six inches of water (1.5 kPa);

(9) no leak, as defined in §101.1 of this title, exists from potential leak sources when measured with a hydrocarbon gas analyzer;

(10) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any storage tank installed after November 15, 1993, which is required to install Stage I control equipment must be equipped with a non-coaxial Stage I connection. In addition, any modification to a storage tank existing prior to November 15, 1993, requiring excavation of the top of the storage tank must be equipped with a non-coaxial Stage I connection, even if the original installation utilized coaxial Stage I connections. At any facility for which a Stage II system was installed prior to November 15, 1993, the Stage I system utilized must be consistent with the relevant requirements of the CARB Executive Order for the Stage II system installed at that facility;

(11) in the covered attainment counties, any storage tank installed after December 22, 1998 which is required to install Stage I control equipment must be equipped with a non-coaxial Stage I connection. In addition, any modification to a storage tank existing prior to December 22, 1998, requiring excavation of the top of the storage tank must be equipped with a non-coaxial Stage I connection, even if the original installation utilized coaxial Stage I connections; and

(12) any motor vehicle fuel dispensing facility that no longer meets an exemption in §115.227 of this title (relating to Exemptions) because of an increase in throughput shall have 120 days to come into compliance with the provisions of this subsection and will remain subject to the provisions of this section, even if its gasoline throughput later falls below exemption limits. However, if gasoline throughput exceeds the exemption limit due to a natural disaster or emergency condition for a period not to exceed one month, upon written request, the executive director may grant a facility continued exempt status.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501290
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: April 13, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 239-6087

♦ ♦ ♦

DIVISION 4. CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §§115.240, 115.242, 115.243, 115.245, 115.248, 115.249

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, and §5.105, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules requiring Stage II vapor recovery systems in nonattainment areas; and §382.208, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendments implement TWC, §5.103, concerning Rules and §5.105, General Policy; and under THSC, §382.002, relating to Policy and Purpose, §382.011, General Powers and Duties, §382.012, State Air Control Plan, §382.017, Rules, §382.019, Methods Used to Control and Reduce Emissions from Land Vehicles, and §382.208, Attainment Program.

§115.240. Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.

(a) The following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§115.10, 101.1, and 3.2 of this title (relating to Definitions).

(1) Major system replacement or modification:

(A) the repair or replacement of any stationary storage tank equipped with a Stage II vapor recovery system;

(B) the replacement of an existing California Air Resources Board (CARB) certified Stage II vapor recovery system with a system certified by CARB under a different CARB Executive Order, or certified by an approved third-party;

(C) the repair or replacement of any part of a piping system attached to a stationary storage tank equipped with a Stage II vapor recovery system, excluding the repair or replacement of piping which is accessible for such repair or replacement without excavation or modification of the vapor recovery equipment; or

(D) the replacement of at least one fuel dispenser.

(2) Onboard refueling vapor recovery--A system on motor vehicles designed to recover hydrocarbon vapors that escape during refueling.

(3) Onboard refueling vapor recovery compatible--A Stage II vapor recovery system certified by CARB or other acceptable independent third-party evaluator, using test methods approved by the executive director, as onboard refueling vapor recovery (ORVR) compatible or a system listed in subsection (b) of this section, either of which maintains a required minimum overall system efficiency of 95% (as certified under third-party evaluation) while dispensing fuel without difficulty to both ORVR-equipped and non ORVR-equipped vehicles.

(4) Owner or operator of a motor vehicle fuel dispensing facility--Any person who owns, leases, operates, or controls the motor vehicle fuel dispensing facility.

(b) The table contained in this subsection is a list of the Stage II vapor recovery systems certified by a CARB Executive Order in effect as of January 1, 2002.
Figure: 30 TAC §115.240(b) (No change.)

§115.245. Testing Requirements.

For all affected persons, compliance with §115.241 and §115.242 of this title (relating to Emission Specifications and Control Requirements) shall be determined at each facility by testing as follows.

(1) Within 30 days of installation, at least once every 36 months thereafter, and upon major system replacement or modification, Stage II vapor recovery systems must successfully meet the performance criteria proper to the system by successfully completing the following testing requirements using the test procedures as found in the commission's Vapor Recovery Test Procedures Handbook (test procedures handbook) (RG-399, November 2002).

(A) For balance and assist systems:

(i) the manifolding or interconnectivity of the vapor space must be consistent with the Executive Order or third-party certification requirements for the installed system (Texas test procedure TXP-101 or equivalent);

(ii) the sum of the vapor leaks in the system must not exceed acceptable limits for the system as defined in the pressure decay test (Texas test procedure TXP-102 or equivalent);

(iii) the maximum acceptable backpressure through a given vapor path must not exceed the limits as found in the backpressure/liquid blockage test applicable for the vapor path for the system (Texas test procedure TXP-103 or equivalent); and

(iv) the maximum gasoline flow rate through the nozzle must not exceed the limits found in the Executive Order or third-party certification for the system (Texas test procedure TXP-104 or equivalent).

(B) For bootless nozzle assist systems, the volume-to-liquid ratio (V/L ratio) or air-to-liquid ratio (A/L ratio) must be within acceptable limits (Texas test procedure TXP-106 or equivalent).

(C) Each system must meet minimum performance criteria specific to the individual system as defined in the California Air Resources Board (CARB) Executive Order or third-party certification. The criteria and test methods contained in the test procedures handbook specified in paragraph (1) of this section must take precedence for applicable tests where performance criteria exist in both the Executive Order and the test procedures handbook; otherwise, the Executive Order specific criteria must take precedence.

(2) Verification of proper operation of the Stage II equipment must be performed in accordance with the test procedures referenced in paragraph (1) of this section at least once every 12 months. The verification must include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP-103, Determination of Dynamic Pressure Performance (Dynamic Back-Pressure) of Vapor Recovery Systems at Gasoline Dispensing Facilities, which must be performed at least once every 36 months.

(3) The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and time and of whom will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air pollution program with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air pollution program with jurisdiction as soon in advance of the scheduled test as is practicable.

(4) Minor modifications of these test methods may only be used if they have been approved by the executive director.

(5) All required tests must be conducted either in the presence of a Texas Commission on Environmental Quality or local program inspector with jurisdiction, or by a person who is registered with the executive director to conduct Stage II vapor recovery tests. The requirement to be registered shall begin on November 15, 1993, or 60 days after the executive director has established the registry, whichever occurs later. The executive director may remove an individual from the registry of testers for any of the following causes:

(A) the executive director can demonstrate that the individual has failed to conduct the test(s) properly in at least three separate instances; or

(B) the individual falsifies test results for tests conducted to fulfill the requirements of this section.

(6) The owner or operator, or his or her representative, shall submit the results of all tests required by this section to the appropriate regional office and any local air pollution control program with jurisdiction within ten working days of the completion of the test(s) using the format specified in the test procedures handbook. For purposes of on-site recordkeeping, the Test Procedures Results Cover Sheet, properly completed with the summary of the testing, is acceptable. The detailed results from each test conducted along with a properly completed summary sheet, as provided for in the test procedures handbook, must be submitted to the appropriate regional office and any local air pollution control program with jurisdiction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501291
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: April 13, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 239-6087

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER J. PETROLEUM PRODUCTS DELIVERY FEE

34 TAC §3.151

The Comptroller of Public Accounts adopts an amendment to §3.151, concerning imposition, collection, and bonds or other security of the fee, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 472).

The change is necessary to reflect current comptroller policy providing that the fee not be assessed on petroleum products withdrawn from a bulk facility and exported from this state or delivered into the fuel supply tanks of vessels or boats, provided that the fuel is not stored prior to export. An additional change is necessary to reflect current comptroller policy providing entities exempt from the fee the option of seeking a refund from the permitted bulk facility from which the petroleum products were withdrawn or seeking a refund directly from the comptroller. A new subsection (k) is added, with the remaining subsections relettered.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Water Code, §26.3574.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501273
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER L. MOTOR FUEL TAX--PRIOR TO JANUARY 1, 2004

34 TAC §3.182

The Comptroller of Public Accounts adopts an amendment to §3.182, concerning motor fuel transporting documents, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 475).

The change is necessary to reflect the correct reference to the Water Code in subsection (c)(14).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §153.004 and §153.227

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501303
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.286

The Comptroller of Public Accounts adopts an amendment to §3.286, concerning seller's and purchaser's responsibilities, with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 476). The comptroller has deleted the statutory references in the title of the section to shorten the title.

The amendment incorporates recent statutory changes. House Bill 2424, 78th Legislature, Regular Session, 2003, amended Tax Code, §111.046, effective October 1, 2003, to allow the comptroller to establish by rule a minimum age for a person to be eligible for a permit or license to be issued by the comptroller. Subsection (c)(2) of the proposed section is being amended to establish a minimum age of 18 for an individual to obtain a sales and use tax permit unless the comptroller allows an exception. House Bill 109, 78th Legislature, 2003, amended Tax Code, §151.406, effective January 1, 2004, to require retailers to report the amount of sales tax refunded based on customs broker certifications. The proposed section adds subsection (f)(7) requiring retailers to file supplemental reports with their sales and use tax returns showing the total amount of sales tax refunded for exports based on customs broker certifications.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, Chapter 151.

§3.286. Seller's and Purchaser's Responsibilities.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Engaged in business--A retailer is engaged in business in Texas if the retailer:

(A) maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room, warehouse or storage place, or other place of business;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates in this state under the authority of the seller to sell, deliver, or take orders for any taxable items;

(C) promotes a flea market, trade day, or other event that involves sales of taxable items;

(D) uses independent salespersons in direct sales of taxable items;

(E) derives receipts from a rental or lease of tangible personal property that is located in this state;

(F) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas sales or use tax; or

(G) conducts business in this state through employees, agents, or independent contractors.

(2) Place of business of the seller--For tax permit requirement purposes, the term means an established outlet, office, or location that the seller, his agent, or employee operates for the purpose of receipt of orders for taxable items. A warehouse, storage yard, or manufacturing plant is not a "place of business of the seller" for tax permit requirement purposes unless the seller receives three or more orders in a calendar year at the warehouse, storage yard, or manufacturing plant.

(3) Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of taxable items for a consideration. A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller and is responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless the participants hold active sales tax permits that the comptroller has issued. A direct sales organization that is engaged in business as defined in paragraph (1)(D) of this subsection is a seller and is responsible for the collection and remittance of the sales tax on all sales of taxable items by the independent salespersons who sell the organization's product. Pawnbrokers, storagemen, mechanics, artisans, or others who sell property to enforce a lien are also sellers. An auctioneer who does not receive payment for the item sold, does not issue a bill of sale or invoice to the purchaser of the item, and who does not issue a check or other remittance to the owner of the item sold by the auctioneer is not considered a seller responsible for the collection of the tax. In this instance, it is the owner's responsibility to collect and remit the tax. Auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

(b) Permits required.

(1) Each seller must apply to the comptroller and obtain a tax permit for each place of business.

(2) Each out-of-state seller who is engaged in business in this state must apply to the comptroller and obtain a tax permit. An out-of-state seller who has been engaged in business in Texas continues to be responsible for collection of Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.

(3) Independent salespersons of direct sales organizations are not required to hold sales tax permits to sell taxable items for direct sales organizations. Direct sales organizations hold responsibility to maintain Texas permits and collect Texas tax on all sales of taxable items by their independent salespersons. See subsection (d)(6) of this section for collection and remittance of tax by direct sales organizations.

(4) A person who engages in business in this state as a seller of tangible personal property or taxable services without a tax permit required by Tax Code, Chapter 151, commits a criminal offense. Each day that a person operates a business without a permit is a separate offense. See §3.305 of this title (relating to Criminal Offenses and Penalties).

(c) To obtain a permit.

(1) A person must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A separate permit under the same account is issued to the applicant for each place of business. The permit is issued without charge.

(2) Each legal entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. An individual or sole proprietor must be at least 18 years of age unless the comptroller allows an exception from the age requirement. The permit cannot be transferred from one owner to another. The permit is valid only for the person to whom it was issued and for the transaction of business only at the address that is shown on the permit. If a person operates two or more types of business at the same location, then only one permit is required.

(3) The permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that has traveling salesmen who operate from one central office needs only one permit, which must be displayed at the central office.

(4) All permits of the seller will have the same taxpayer number; however, each business location will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations owned by a taxpayer.

(d) Collection and remittance of the tax.

(1) Each seller must collect the tax on each separate retail sale in accordance with the statutory bracket system in Tax Code, §151.053. Copies of the bracket system should be displayed in each place of business so both the seller and the customers may easily use them. The tax is a debt of the purchaser to the seller until collected. A seller who is a printer should see paragraph (7) of this subsection for an exception to the collection requirement.

(2) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for $.07, then the seller must collect the tax on the total sum of $.14. Tax must be reported and remitted to the comptroller as provided by Tax Code, §151.410. When tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the tax due. Conversely, when the tax collected under the bracket system is less than the tax due on the seller's total receipts, the seller is required to remit tax on the total receipts even though the seller did not collect tax from customers.

(3) The amount of the sales tax must be separately stated on the bill, contract, or invoice to the customer or there must be a written statement to the customer that the stated price includes sales or use taxes. Contracts, bills, or invoices that merely state that "all taxes" are

included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without tax included. The seller or customer may overcome the presumption by using the seller's records to show that tax was included in the sales price. Out-of-state sellers must identify the tax as Texas sales or use tax.

(4) A seller who advertises or holds out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items commits a criminal offense. See §3.305 of this title.

(5) The practice of rounding off the amount of tax that is due on the sale of a taxable item is prohibited. Tax must be added to the sales price according to the statutory bracket system.

(6) Direct sales organizations must collect and remit tax from independent salespersons as follows.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after the customer's order has been taken, then the direct sales organization must collect and remit sales tax on the actual sales price of the taxable item.

(B) If an independent salesperson purchases a taxable item before the customer's order is taken, then the direct sales organization must collect and remit the tax from the salesperson based on the suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual price for which the item was sold to the salesperson at the tax rate that was in effect for the salesperson's location.

(7) A printer is a seller of printed materials and is required to collect tax on sales. However, a printer who is engaged in business in Texas is not required to collect tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both in Texas and outside of Texas; and

(C) the purchaser issues an exemption certificate that contains the statement that the printed materials are for multistate use and the purchaser agrees to pay to Texas all taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (f)(4) of this section for additional reporting requirements.

(e) Payment of the tax.

(1) Each seller, or purchaser who owes tax that was not collected by a seller, must remit tax on all receipts from the sales or purchases of taxable items less any applicable deductions. On or before the 20th day of the month following each reporting period, each person who is subject to the tax shall file a consolidated return together with the tax payment for all businesses that operate under the same taxpayer number. Reports and payments that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(2) The returns must be signed by the person who is required to file the report or by the person's duly authorized agent, but need not be verified by oath.

(3) The returns must be filed on forms that the comptroller prescribes. The fact that the seller or purchaser does not receive the correct forms from the comptroller does not relieve the seller or purchaser of the responsibility to file a return and to pay the required tax.

(4) A seller or a purchaser who owes tax that was not collected by a seller, who remitted $100,000 or more in sales and use tax to the comptroller during the preceding state fiscal year (September 1 through August 31) must file returns and transfer payments electronically as provided by Tax Code, §111.0625 and §111.0626. For further information about electronic filing of returns and payment of tax, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(5) A non-permitted purchaser who owes sales or use tax that was not collected by a seller must remit the tax to the comptroller on or before the 20th of the month following the month in which the taxable event occurs.

(f) Reporting period.

(1) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than $1,500 in state tax per quarter to report may file returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31. The returns must be filed on or before the 20th day of the month following the period ending date.

(2) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than $1,000 state tax to report during a calendar year may file yearly returns upon authorization from the comptroller.

(A) Authorization to file returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file returns on a yearly basis will be denied if a taxpayer's liability exceeded $1,000 in the prior calendar year.

(C) A taxpayer who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a taxpayer's state sales and use tax liability is greater than $1,000 during a calendar year. The taxpayer must file a return for that month or quarter, depending on the amount, in which the tax remittance or liability is greater than $1,000. On that report, the taxpayer must report all taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, so long as the yearly tax liability is greater than $1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly returns.

(F) Yearly filers must report on a calendar year basis. The return and payment are due on or before January 20 of the next calendar year.

(3) Sellers, and purchasers who owe tax that was not collected by sellers, who have $1,500 or more in state tax per quarter to report must file monthly returns except for sellers who prepay the tax.

(4) A printer who is not required to collect tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(7) of this section must file a quarterly special use tax report with the comptroller on or before the last day of the month following the quarter. The special use tax report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and

remit taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(7) of this section.

(5) Each taxpayer who is required to file a city, county, special purpose district (SPD), or metropolitan transit authority/city transit department (MTA/CTD) sales and use tax return must file the return at the same time that the state sales and use tax return is filed.

(6) State agencies. State agencies that deposit taxes directly with the comptroller's office according to Accounting Policy Statement Number 8 are not required to file a separate tax return. A fully completed deposit request voucher is deemed to be the return filed by these agencies. Paragraphs (1)-(3) of this subsection do not apply to these state agencies. Taxes must be deposited with the comptroller's office within the time period otherwise specified by law for deposit of state funds.

(7) Retailers must report the total amount of sales tax refunded for sale of merchandise exported beyond the territorial limits of the United States and documented by licensed customs broker certifications under Tax Code §151.307(b)(2). Retailers who refund tax on exports based on customs broker certifications must file the supplemental report on a form prescribed by the comptroller. Retailers file the supplemental reports at the same time and for the same reporting period as the retailer's state sales and use tax return.

(g) Filing the return; prepaying the tax; discounts; penalties.

(1) The comptroller makes forms available to all persons who are required to file returns. The failure of the taxpayer to obtain the forms does not relieve that taxpayer from the requirement to file and remit the tax timely. Each taxpayer may claim a discount for timely filing and payment as reimbursement for the expense of collection of the tax. The discount is equal to 0.5% of the amount of tax due. Certain sellers and purchasers are required to file returns and pay tax electronically, as provided in subsection (e)(4) of this section.

(2) The return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet. The 0.5% discount for timely filing and payment may be claimed on the return for each reporting period and computed on the amount timely reported and paid with that return.

(3) Prepayments may be made by taxpayers who file monthly or quarterly returns. The amount of the prepayment must be a reasonable estimate of the state and local tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A taxpayer who makes a timely prepayment based upon a reasonable estimate of tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the tax is due.

(D) On or before the 20th day of the month that follows the quarter or month for which a prepayment was made, the taxpayer must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the taxpayer may retain the 0.5% reimbursement provided that both the return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the taxpayer will be mailed an overpayment notice or refund warrant.

(4) Remittances that are less than a reasonable estimate as required by paragraph (3) of this subsection are not regarded as prepayments. The 1.25% discount will not be allowed. If the taxpayer owes more than $1,500 in a calendar quarter, the taxpayer is regarded as a monthly filer. All monthly reports that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

(5) If a taxpayer does not file a return together with payment on or before the due date, the taxpayer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the taxpayer, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the *Wall Street Journal* on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(6) Permit holders are required to file sales and use tax returns. A permit holder must file a sales and use tax return even if the permit holder has no sales or tax to report for the reporting period. A person who has failed to file timely reports on two or more previous occasions must pay an additional penalty of $50 for each subsequent report that is not filed timely. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period.

(h) Records required.

(1) Records must be kept for four years, unless the comptroller authorizes in writing a shorter retention period. Exemption and resale certificates must be kept for four years following the completion of the last sale covered by the certificate. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(2) The comptroller or an authorized representative has the right to examine, copy, and photograph any records or equipment of any person who is liable for the tax in order to verify the accuracy of any return or to determine the tax liability in the event that no return is filed.

(3) A person who intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in, records that are required to be made or kept under Tax Code, Chapter 151, commits a criminal offense. See §3.305 of this title.

(i) Resale and exemption certificates.

(1) Any person who sells taxable items in this state must collect sales and use tax on taxable items that are sold unless a valid and properly completed resale certificate, exemption certificate, direct payment exemption certificate, or maquiladora exemption certificate is received from the purchaser. Simply having permit numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.

(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions, or in the United Mexican States. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). To be valid, the resale certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out- of-state purchaser. A Mexican retailer who claims a resale exemption must show the Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of the Mexican Registration Form to the Texas seller.

(3) A seller may accept an exemption certificate in lieu of the tax on sales of items that will be used in an exempt manner or on sales to exempt entities. See §3.287 of this title (relating to Exemption Certificates). There is no exemption number. An exemption certificate does not require a number to be valid.

(4) A purchaser who claims an exemption from the tax must issue to the seller a properly completed resale or exemption certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.

(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense. See §3.305 of this title.

(6) Direct payment permit holders are entitled to issue exemption certificates when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(7) Maquiladora export permit holders are entitled to issue maquiladora exemption certificates when they purchase tangible personal property, other than that purchased for resale. Maquiladora export permit holders should refer to §3.358 of this title (relating to Maquiladoras).

(8) The seller should obtain a properly executed resale or exemption certificate at the time a transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date on which the seller receives written notice from the comptroller of the seller's duty to deliver certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption of three business days for mail delivery by submitting proof from the United States Postal Service or by providing other competent evidence that shows a later delivery date. Any certificates that are delivered to the comptroller during the 60-day period are subject to verification by the comptroller before any deductions are allowed. Certificates that are delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), §3.288 of this title (relating to Direct Payment Procedures and Qualifications) and §3.282 of this title (relating to Auditing Taxpayer Records).

(j) Suspension of permit.

(1) If a person fails to comply with any provision of Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

(2) Before a seller's permit is suspended, the seller is entitled to a hearing before the comptroller to show cause why the permit or permits should not be suspended. The comptroller shall give the seller at least 20 days notice, which shall be in accordance with the requirements of §1.14 of this title (relating to Notice of Setting).

(3) After a permit has been suspended, a new permit will not be issued to the same seller until the seller has posted sufficient security and satisfied the comptroller that the seller will comply with both the provisions of the law and the comptroller's rules and regulations.

(4) A person who operates a business in this state as a seller of tangible personal property or taxable services after the permit has been suspended commits a criminal offense. Each day that a person operates a business with a suspended permit is a separate offense. See §3.305 of this title.

(k) Refusal to issue permit. The comptroller is required by Tax Code, §111.0046, to refuse to issue any permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(l) Cancellation of sales tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the permit, and the comptroller may cancel the permit. "No Business Activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a permit is cancelled, the person may reapply and obtain a new sales tax permit upon request provided the issuance is not prohibited by subsection (k)(1) or (2) of this section, or by Tax Code, §111.0046.

(m) Direct payment. Yearly and quarterly filing requirements, prepayment procedures and discounts for timely filing do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications). Direct payment returns and remittances are due monthly on or before the 20th day of the month following the end of the calendar month for which payment is made.

(n) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 and §111.024, provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability: Liability Incurred by Purchase of a Business).

(o) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501274
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

34 TAC §3.295

The Comptroller of Public Accounts adopts an amendment to §3.295, concerning natural gas and electricity, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 480).

The adopted amendment implements legislative changes made by House Bill 1194, 78th Legislature, 2003. New subsection (i) is added to address pipeline safety fees that are not subject to sales and use tax.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Utilities Code, §121.211.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501275
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.303

The Comptroller of Public Accounts adopts an amendment to §3.303, concerning transportation and delivery charges, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 483).

The adopted amendment clarifies that separately stated postage charges will not be subject to sales and use tax when incurred by the seller at the request of a client to distribute both taxable tangible personal property and taxable services to third party recipients as designated by the client. Subsection (d) is amended accordingly.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.005 and §151.007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501278
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.323

The Comptroller of Public Accounts adopts an amendment to §3.323, concerning imports and exports, with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 483). The previous proposed version contained a typographical error. Subsection (c)(2) has a misplaced bracket. The bracket will be moved to enclose a second "the" in the sentence. The comptroller has deleted the statutory references in the title of the section to shorten the title.

This section is being amended to implement House Bill 109, 78th Regular Session of the Texas Legislature. Effective January 1, 2004, the legislation amends Tax Code §151.157, §151.158, §151.307, and adds §151.1575 regarding customs broker export certifications. Subsection (c)(2) of the proposed section contains information about this change and references §3.360, concerning customs brokers, which is being amended to reflect the new customs broker certification requirements. New subsection (g) explains the reporting requirements for retailers who refund sales tax based on licensed customs broker certifications. Other amendments to the language of the section are for the purposes of clarity.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, Chapter 151.

§3.323. Imports and Exports.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Air forwarder--A licensed International Air Transportation Association freight forwarder.

(2) Consignee--The person named in a bill of lading to whom or to whose order the bill promises delivery.

(3) Consignor--The person named in a bill of lading as the person from whom the goods have been received for shipment.

(4) Licensed and certificated carrier--A person authorized by the appropriate United States agency or by the appropriate state agency within the United States to operate an aircraft, vessel, train, motor vehicle, or pipeline as a common or contract carrier. Certificates of inspection or airworthiness certificates are not the appropriate documents for authorizing a person to operate as a common or contract carrier. These documents relate to the carrier device itself rather than a person's right to operate a carrier business.

(5) Licensed customs broker--A person who is licensed by the United States Customs Service to act as a custom house broker and who holds a Texas Customs Broker's License issued by the comptroller as provided in §3.360 of this title (relating to Customs Brokers).

(6) Ocean forwarder--A licensed Federal Maritime Commission freight forwarder.

(b) United States Constitution. On the basis of the import and export clause of the United States Constitution, Article 1, §10, clause 2, tangible personal property imported into or exported from Texas is exempt from taxation by the Tax Code, §151.307 and §151.330, so long as the property retains its character as an import or export.

(c) Exports.

(1) When an exemption is claimed because tangible personal property is exported beyond the territorial limits of the United States, proof of export may be shown only by:

(A) a copy of a bill of lading issued by a licensed and certificated carrier of persons or property that shows the seller as consignor, the buyer as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation that is valid under §3.360 of this title (relating to Customs Brokers) provided by a licensed customs broker certifying that the property will be exported to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the property was imported into a country other than the United States. For the country of Mexico, the formal entry document would be the pedimento de importaciones document with a computerized, certified number issued by Mexican customs officials, or an alternative type of formal entry document also used by Mexican customs officials, such as the boleta;

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier that describes the property being exported and a copy of the air forwarder's, ocean forwarder's, or rail freight forwarder's receipt if an air, ocean, or rail freight forwarder takes possession of the property in Texas; or

(E) a maquiladora exemption certificate issued by an organization of the type defined in §3.358 of this title (relating to Maquiladoras). The maquiladora must also provide a copy of its maquiladora export permit issued by the comptroller.

(2) The retailer is responsible for obtaining proof of exportation. Only one type of proof relating to a particular piece of property is necessary. For example, a furniture store sells a table and collects sales tax. The purchaser returns to the store a week later with a valid pedimento de importaciones showing that the table was imported into Mexico. The retailer may accept the pedimento, alone, as proof of export and refund the tax. It is not necessary for the retailer to also obtain an export certification form issued by a licensed customs broker. Except as provided in §3.358 of this title (relating to Maquiladoras), exemption certificates, affidavits, or statements from the purchaser that the property will be or has been exported are not sufficient to exempt the sale as an export. The certification form provided by a licensed Texas customs broker as provided in §3.360 of this title (relating to Customs Brokers), is acceptable as proof of export. A passport number taken by a seller from a passport issued by a foreign country is not acceptable as proof of export. For information concerning resale certificates given by Mexican retailers, see §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(3) Storing property in Texas by the owner prior to exportation is a use of that property in Texas. Property stored or otherwise used or consumed in Texas by the owner loses its exemption as an export. For example, clothing or jewelry actually worn by the purchaser in Texas is used in Texas; automotive parts (not including electronic audio equipment) installed on the purchaser's motor vehicle in Texas are used in Texas if the vehicle is subsequently driven in Texas; and food ready for immediate consumption that is purchased in Texas is presumed to be used in Texas. By law, electronic audio equipment retains the exemption even if installed in a motor vehicle that is driven in Texas prior to export. Sufficient time will be allowed to arrange for shipping. Property in Texas longer than 30 days from date of purchase will be presumed to have been stored. Any use of the property in Texas by the owner prior to export also causes the loss of the export exemption. Property in the hands of a freight forwarder is not covered by this provision.

(4) The sale of property to military personnel is taxable unless proof of export is maintained as outlined in paragraph (1) of this subsection.

(5) If a seller delivers property to a purchaser in Texas, the seller must collect tax at the time of sale unless the sale is exempt for a reason other than export and the seller accepts a properly completed resale or exemption certificate. Tax may not be refunded until the property has actually been exported from the territorial limits of the United States and the seller has received valid proof of export as described in this subsection. There is a rebuttable presumption that an export certification form issued by a licensed customs broker who complies with §3.360 of this title (relating to Customs Brokers) is valid. Tax not collected will be assessed against the seller. This paragraph does not apply when proof of export is provided to the seller at the time of sale by a maquiladora according to the terms of paragraph (1)(E) of this subsection.

(d) Imports. Property imported into Texas from another country is exempt from Texas use tax as long as the property retains its character as an import. When transit ceases in Texas, the import becomes subject to the Texas use tax.

(e) Refunds.

(1) A retailer who collects sales tax on tangible personal property that qualifies for exemption under subsection (b) of this section may refund the tax to the original purchaser or the original purchaser's assignee upon receipt of export documentation as required by subsection (c) of this section.

(2) A retailer who receives documentation that is valid under subsection (c)(1)(B) of this section, must report the total amount of sales tax refunded as provided in subsection (g) of this section, may not refund the tax paid under this chapter on that purchase before:

(A) the 24th hour after the hour stated as the time of export on the documentation, if the retailer is located in a county that borders the United Mexican States; or

(B) the seventh day after the day stated as the date of export on the documentation, if the retailer is located in a county that does not border the United Mexican States.

(3) The refund may be made by certified check, company check, money order, credit memo, or cash. If the refund is made in cash, the retailer must receive at the time the refund is made a receipt showing a description of the property purchased, the amount and date of the refund, and the name, address, and signature of the purchaser and, if applicable, the purchaser's assignee. A retailer who issues a tax refund to the purchaser's assignee must also receive a copy of the purchaser's written assignment of the right to a refund. A retailer who makes a refund before the time prescribed by subsection (e)(2)(A) or (B) of this section or makes a refund that is undocumented or improperly documented is liable for the tax refunded plus interest.

(4) A copy of the certified check, company check, money order, credit memo, or signed cash receipt and a copy of the written assignment of the purchaser's right to a refund, if applicable, must be attached to the original export documents and maintained in the seller's files.

(5) In an audit, the auditor must be able to tie the export documents to the original taxable transaction. The seller must retain the original invoice of the sale. Cash register receipts and other records of the original taxable transaction that do not include a detailed, specific

description of the items purchased are not sufficient to tie the export documents to the original taxable transaction. Refunds made pursuant to undocumented or improperly documented export exemptions will be assessed against the seller.

(f) Records. Please refer to §3.281 of this title (relating to Records Required; Information Required), §3.282 of this title (relating to Auditing Taxpayer Records), and §3.360 of this title (relating to Customs Brokers).

(g) Reports. Retailers are required to report the total amount of sales tax refunded for items exported beyond the territorial limits of the United States based on licensed customs broker certifications on a supplemental sales tax report prescribed by the comptroller at the same time and for the same reporting period as the retailer's state sales and use tax return.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501276
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.325

The Comptroller of Public Accounts adopts an amendment to §3.325, concerning refunds, interest, and payments under protest, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 485).

The amendment readopts, as subsection (c)(3), a provision that was inadvertently deleted from the most recent version of this rule. Subsection (c)(2)(B) is clarified, a new subsection (c)(3) relating to the statute of limitations for refund claims filed pursuant to a deficiency determination is added to implement longstanding agency policy, and the remaining subsections are relettered accordingly.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §111.104(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501277
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.365

The Comptroller of Public Accounts adopts an amendment to §3.365, concerning sales of clothing and footwear during a three-day period in August, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 487).

The amendment implements the repeal of the opt out provision for local taxing authorities made by House Bill 2425, 78th Legislature, 2003. Subsection (q) is deleted accordingly. Subsections (f)(1), (n)(1), and (n)(2) are amended for clarity.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.326.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501279
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.367

The Comptroller of Public Accounts adopts an amendment to §3.367, relating to timber items, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 490).

The amendment clarifies that persons who use off-road heavy-duty diesel equipment in timber operations may be exempt from the Texas Emissions Reduction Plan Surcharge imposed on that equipment. A new subsection (f) is added and the remaining subsections are relettered accordingly.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.3162 and §151.0515.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501280
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.430

The Comptroller of Public Accounts adopts new §3.430, concerning records required, information required, with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 492). The comptroller has deleted the statutory references in the title of the section to shorten the title.

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule sets out records required to be maintained by motor fuel tax license holders, unlicensed retail dealers of motor fuel, and unlicensed users of motor fuel claiming refund. The new rule also provides information required to obtain a motor fuel tax license or registration under Tax Code, Chapter 162.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code. Title 2.

The new rule implements Tax Code, §§162.004, 162.012, 162.107, 162.108, 162.115, 162.127, 162.216, 162.208, 162.209, 162.229, and 162.309.

§3.430. Records Required, Information Required.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Records Required.

(1) A supplier and permissive supplier, as those terms are defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records showing:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(2) A supplier or permissive supplier when acting as a distributor, importer, exporter, blender, aviation fuel dealer, or motor fuel transporter is subject to the record keeping requirements of that license.

(3) A distributor of gasoline or diesel fuel, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin; and

(G) proof of payment of tax to the destination state in a form acceptable to the comptroller for gasoline or diesel fuel exported from this state under Tax Code, §162.204(a)(4)(A).

(4) A distributor when acting as an importer, exporter, blender, aviation fuel dealer, or motor fuel transporter is subject to the record keeping requirements of that license.

(5) An importer, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(6) An importer when acting as an exporter or blender is subject to the record keeping requirements of that license.

(7) An exporter, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading; and

(ii) exported from this state by destination state or country;

(G) proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller if an exemption under Tax Code, §162.104(a)(4)(B) and §162.204(a)(4)(B) is claimed.

(8) A blender, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show the number of gallons of:

(A) all gasoline or diesel fuel inventories on hand at the first of each month;

(B) all gasoline or diesel fuel refined, compounded, or blended;

(C) all blending agents blended with gasoline or diesel fuel;

(D) all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(E) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(F) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident.

(9) A terminal operator, as that term is defined in Tax Code, §162.001, shall keep a record showing:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month, including the name and license number of each owner and the amount of gasoline or diesel fuel held for each owner;

(B) the number of gallons of all gasoline or diesel fuel received, showing the name of the seller and the date of each purchase or receipt;

(C) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(D) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(E) the number of gallons of an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(10) A dealer, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show the number of gallons of:

(A) gasoline or diesel fuel inventories on hand at the first of each month;

(B) all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) all gasoline or diesel fuel sold or used, showing the date of the sale or use; and

(D) all gasoline or diesel fuel lost by fire, theft, or accident.

(11) An interstate trucker, as that term is defined in Tax Code, §162.001, shall keep a record on an individual-vehicle basis of:

(A) the total miles traveled, evidenced by odometer or hubodometer readings, everywhere by all vehicles traveling to or from this state, and the total miles traveled, evidenced by odometer or hubodometer readings, in this state, including for each individual vehicle:

(i) date of each trip (starting and ending);

(ii) trip origin and destination;

(iii) beginning and ending odometer or hubodometer reading of each trip;

(iv) odometer or hubodometer reading entering Texas, and odometer or hubodometer reading leaving Texas;

(v) power unit number or vehicle identification number or license plate number;

(B) the total quantity purchased and delivered at retail of gasoline, diesel fuel or liquefied gas everywhere by all vehicles traveling to or from this state, and the total quantity of gasoline, diesel fuel or liquefied gas purchased and delivered into the fuel supply tanks of motor vehicles in this state, including for each individual vehicle:

(i) date of purchase;

(ii) name and address of seller;

(iii) number of gallons or liters purchased;

(iv) type of fuel purchased;

(v) price per gallon or liter; and

(vi) unit number of the vehicle into which the fuel was placed.

(C) An interstate trucker that uses a distribution log to record removals from the person's own bulk storage into a motor vehicle must include on each log the person's stamped or preprinted name and address, and for each individual delivery:

(i) date of delivery;

(ii) number of gallons or liters of gasoline, diesel fuel or liquefied gas delivered;

(iii) license plate or vehicle identification number or power unit number;

(iv) odometer or hubodometer reading; and

(v) signature of the user.

(D) An interstate trucker that maintains bulk fuel storage must keep a record of the number of gallons of gasoline, diesel fuel, or liquefied gas beginning and ending inventories, all invoices of bulk purchases and records to substantiate all fuel withdrawals from storage.

(12) An aviation fuel dealer, as that term is defined in Tax Code, §162.001, shall keep the shipping document that relates to each receipt for distribution and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(D) the number of gallons of all gasoline or diesel fuel sold or used in aircraft or aircraft servicing equipment; and

(i) the name of the purchaser or user of gasoline or diesel fuel;

(ii) the date of the sale or use of gasoline or diesel fuel; and

(iii) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which gasoline or diesel fuel is used.

(13) A dyed diesel fuel bonded user, as that term is defined in Tax Code, §162.001, shall keep a record showing the number of gallons of:

(A) dyed and undyed diesel fuel inventories on hand at the first of each month;

(B) dyed and undyed diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) dyed and undyed diesel fuel delivered into the fuel supply tanks of motor vehicles;

(D) dyed and undyed diesel fuel used in off-highway equipment or for other nonhighway purposes and described in Tax Code, §162.229(c); and

(E) dyed and undyed diesel fuel lost by fire, theft, or accident.

(14) A motor fuel transporter, as that term is defined in Tax Code, §162.001, shall keep a complete and separate record of each intrastate and interstate transportation of gasoline or diesel fuel, showing:

(A) the date of transportation;

(B) the name of the consignor and consignee;

(C) the means of transportation;

(D) the quantity and kind of gasoline or diesel fuel transported;

(E) the points of origin and destination;

(F) the import verification number if that number is required by §3.441 of this title (relating to Documentation of Imports and Exports, Import Verification Numbers, Export Sales, and Diversion Numbers); and

(G) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce, the diversion number if that number is required by §3.441 of this title.

(15) A licensed liquefied gas dealer, as that term is described in Tax Code, §162.304, shall keep a record of all liquefied gas sold or delivered for taxable purposes.

(16) A person who does not hold a license under Tax Code, Chapter 162, who files a claim for refund of gasoline or diesel fuel taxes shall keep the shipping document that relates to each receipt of gasoline or diesel fuel, original invoice issued by the seller, and distribution log to support gallons of gasoline or diesel fuel removed from the person's own bulk storage and for each individual delivery:

(A) the date of delivery;

(B) the number of gallons of gasoline or diesel fuel delivered;

(C) the signature of user; and

(D) the type or description of off-highway equipment into which the gasoline or diesel fuel was delivered or the type of motor vehicle identified by state highway licensed plate number, vehicle identification number, or unit number assigned to motor vehicle and odometer or hubmeter reading.

(c) The comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, dyed diesel fuel bonded user, and interstate trucker for any purchase,

sale, or delivery of gasoline or diesel fuel if the schedules are consistent with the requirements of Tax Code, Chapter 162.

(d) The records required by this section must be kept for at least four years and must be open to inspection at all times by the comptroller and the attorney general.

(e) A person who claims a deduction or exclusion authorized by law must keep records that substantiate the claim. When records regarding the amount and applicability of any deductions or exclusions from the motor fuels tax are insufficient, the comptroller may estimate deductions or exclusions based on any records available or may disallow all deductions and exclusions. No exclusions for loss by fire, accident, or theft will be allowed unless accompanied by fire department, environmental regulatory agency, or police department reports that verify the fire, accident, or theft.

(f) Failure to keep adequate records. If any person who is required by this section to keep accurate records of receipts, purchases, sales, distributions, or uses of gasoline or diesel fuel, fails to keep those records, the comptroller may estimate the tax liability based on any information available.

(g) The comptroller may suspend any permit or license the comptroller has issued to a person if the person fails to keep the records required by this section.

(h) Records may be written, kept on microfilm, stored on data processing equipment, or may be in any form that the comptroller can readily examine.

(i) Information required.

(1) The comptroller may require any person who must hold a license or registration under Tax Code, Chapter 162, to furnish information that the comptroller needs to:

(A) identify any person who applies for a motor fuels license, uses a signed statement to purchase tax-free dyed diesel fuel, or transports motor fuel in Texas by truck, railcar, or vessel, or any person who is required to file a return;

(B) determine the amount of bond, if any, required to commence or continue business;

(C) determine possible successor liability; and

(D) determine the amount of tax the person is required to remit, if any.

(2) The information required may include, but is not limited to, the following:

(A) name of the actual owner of the business;

(B) name of each partner in a partnership;

(C) names of officers and directors of corporations and other organizations;

(D) all trade names under which the owner operates;

(E) mailing address and actual locations of all business outlets;

(F) license numbers, title numbers, and other identification of business vehicles;

(G) identification numbers assigned by other governmental agencies, including social security numbers, federal employers identification numbers, and driver's license numbers;

(H) names of gasoline and diesel fuel suppliers or distributors with whom the person will transact business; and

(I) names and last known addresses of former owners of the business.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501304
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.432

The Comptroller of Public Accounts adopts new §3.432, concerning refunds on gasoline and diesel fuel tax, with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 496). The comptroller has deleted the statutory references in the title of the section to shorten the title.

The amendment incorporates legislative changes made by House Bill 2458, 78th Legislature, 2003, Regular Session, which amended Tax Code by adding Chapter 162. The proposed rule provides guidelines for claiming a tax refund or credit for taxes paid on gasoline or diesel fuel used off the highway, resold to certain exempt entities, exported from Texas, loss caused by fire, theft, or accident, and other exempt uses authorized by law.

No comments were received regarding adoption of the new section.

This rule is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new rule implements Tax Code §§162.104, 162.125, 162.127, 162.128, 162.204, 162.227, 162.229, and 162.230.

§3.432. Refunds on Gasoline and Diesel Fuel Tax.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Tile 34, Part 1, Chapter 3, Subchapter L.

(b) Refunds and credits. A person may file a claim for refund or a license holder may take a credit on a return for taxes paid on gasoline or diesel fuel used off the highway, for certain resale, for export from Texas, for loss caused by fire, theft, or accident, or other use if authorized by law. The claim for refund or credit must be filed in accordance with this section.

(c) Time limitation. A claim for refund or credit must be filed before the expiration of the following time limitations, as provided by Tax Code, §162.128 and §162.230:

(1) one year from the first day of the calendar month that follows:

(A) purchase;

(B) tax exempt sale;

(C) use, if withdrawn from one's own storage for one's own use;

(D) export from Texas; or

(E) loss by fire, theft, or accident; or

(2) for dyed and undyed diesel fuel used in off-highway equipment, stationary engines, or for other nonhighway purpose on or after January 1, 2004, a claim for refund on diesel fuel under subsections (e), (f), and (g) of this section must be postmarked no later than December 31, 2004, or

(3) four years from the due and payable date for a tax return on which an overpayment of tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter, or blender who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or law. The supplier, permissive supplier, distributor, importer, exporter, or blender must establish the credit by filing an amended tax return for the period in which the error occurred and tax payment was made to the comptroller.

(d) Filing forms and documentation. A claim for refund or credit must be on a form prescribed by the comptroller and must be submitted within the applicable limitations period provided by subsection (c) of this section. A person or license holder is required to maintain and have available for inspection the following documentation and information to substantiate a claim for refund or credit:

(1) an original purchase invoice with the name and address of the seller or name of the purchaser, whichever is applicable. For refund or credit purposes, the original invoice may be a copy of the original impression if the copy has been stamped "Customer Original Invoice," "Original for Tax Purposes," or similar wording. If a copy is so stamped, the original and all other copies must then be stamped "Not Good for Tax Purposes" or similar wording. Invoices of original impression submitted in support of refund claims must be without the above wording stamped or imprinted;

(2) evidence as to who paid the tax. A purchaser claiming a refund or credit must have an invoice that either separately states the tax amount paid or a written statement that the price included state tax. A seller claiming a refund or credit must have issued an invoice, signed by the purchaser, that contains a statement that no state tax was collected or that it was a tax-free sale;

(3) if refund or credit is claimed on fuel purchased at retail the purchase invoice must note the identification of each vehicle or type of equipment (e.g., including railway engines, motor boats, refrigeration units, stationary engines, off-highway equipment, or nonhighway farm equipment that has traveled between multiple farms or ranches as allowed in §3.440 of this title (relating to On-Highway Travel of Farm Machinery)) in which the fuel was delivered and used;

(4) if refund or credit is claimed on fuel removed from the claimant's own bulk storage, then a distribution log as provided by Tax Code, §162.127 and §162.229. The distribution log must contain the name and address of the user and, for each individual removal from the bulk storage the following information:

(A) the date the fuel was removed;

(B) the number of gallons removed;

(C) the type of fuel removed;

(D) signature of the person removing the fuel; and

(E) the type or description of the off-highway equipment into which the fuel the was delivered, or the identification of both on-highway and off-highway motor vehicles into which the fuel was delivered, including the state highway license number or vehicle identification number and odometer or hubmeter reading, or description of other off-highway use.

(e) Refund or credit for gasoline or dyed and undyed diesel fuel used solely for an off-highway purpose. A claim for refund or credit for gasoline or dyed and undyed diesel fuel used solely for off-highway purposes must list each off-highway vehicle or piece of equipment or document other nonhighway use and the total number of gallons used by way of a distribution log as described in subsection (d) of this section. The refund or credit for dyed or undyed diesel fuel used for off-highway purpose expires on January 1, 2005.

(f) Refund or credit for gasoline or dyed and undyed diesel fuel used by a lessor of off-highway equipment. The lessor of off-highway equipment who claims a refund or credit of state fuel tax must maintain documentation that shows that the state tax was assessed and paid, a list of each piece of off-highway equipment, and a distribution log as described in subsection (d) of this section of the number of gallons of gasoline, dyed diesel fuel, and undyed diesel fuel used in both on-highway and off-highway vehicles and equipment. A lessor who claims a refund of state fuel tax may include a separate refueling, fuel reimbursement, or fuel service charge on the invoice, if the invoice contains a statement that the fuel charge does not include state motor fuel taxes. The refund or credit for dyed or undyed diesel fuel used by a lessor of off-highway equipment expires on January 1, 2005.

(g) Refund or credit for gasoline or dyed and undyed diesel fuel used in a motor vehicle operated exclusively off-highway, except for incidental highway use. A claim for refund or credit may be filed by a person who used gasoline or dyed and undyed diesel fuel in motor vehicles incidentally on the highway, when the incidental travel on the public highway is infrequent, unscheduled, and insignificant to the total operation of the motor vehicle, and only for the purpose of transferring the base of operation or to travel to and from required maintenance and repair. A refund or credit for dyed or undyed diesel fuel used in a motor vehicle operated exclusively off-highway, except for incidental highway use, expires on January 1, 2005.

(1) A record that shows the date and miles traveled during each highway trip must be maintained.

(2) 1/4 gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(h) Refund or credit for gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. A person who files a claim for refund or a license holder who takes a credit on a tax return for gasoline used in the operation of power take-off or auxiliary power units must use one of the following methods in determination of the amount of gasoline used:

(1) direct measurement method. The use of a metering device, as defined by §3.435 of this title (relating to Metering Devices Used to Claim Refund of Tax on Gasoline Used in Power Take-Off and Auxiliary Power Units) is an acceptable method for determination of fuel usage. A person who claims a refund or credit for gasoline used to propel motor vehicles with approved measuring or metering devices that measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped, and the records must reflect:

(A) the miles driven as shown by any type of odometer or hubmeter;

(B) the gallons delivered to each vehicle; and

(C) the gallons used as recorded by the meter or other measuring device;

(2) gasoline-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units. Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks that are equipped with power take-off or auxiliary power units that are mounted on the motor vehicle and use the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. A solid waste refuse truck means a motor vehicle equipped with a power take-off or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse;

(3) mileage factor method. The nontaxable use may be determined by computing the taxable use at 1/4 gallon for each mile traveled, as recorded by the odometer or hubmeter and subtracting that amount from the total quantity of gasoline delivered into the motor vehicle fuel supply tanks. The remainder will be considered nontaxable, and a tax refund or tax credit may be claimed on that quantity of fuel;

(4) two tank method. A motor vehicle may be equipped with two fuel tanks and an automatic switching device that a spring-activated air release parking brake operates, and that switches from one tank that is designated for highway use to another tank that is not so designated when the vehicle is stationary. The highway tank and the not-for-highway tank may not be connected by crossover line or equalizer line of any kind. The tax paid on the gasoline delivered to the tank designated not-for-highway use may be claimed as a tax refund or taken as a tax credit. All gasoline delivered into the fuel supply tanks of a vehicle that is equipped with an automatic switching device must be invoiced as taxable. Separate invoices must be issued for deliveries of fuel into each tank. A notation that indicates that fuel was delivered into the tank designated not- for-highway use must be made on invoices;

(5) fixed percentage method. In lieu of the use of one of the previously mentioned methods, the owner or operator of a gasoline-powered motor vehicle that is equipped with a power take-off or auxiliary power unit that is mounted on the vehicle may claim a credit or refund of the tax paid on 5.0% of the total taxable gasoline used in this state by each vehicle so equipped;

(6) proposed alternate methods. Proposals for the use of methods that this section does not specifically cover to determine the amount of gasoline used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval;

(7) accurate mileage records must be kept regardless of the method used;

(8) beginning September 1, 2003, motor vehicle air conditioning and heating systems are no longer considered power take-off systems. A person may file a claim for refund of state taxes paid on gasoline used in the operation of an air conditioning or heating system prior to September 1, 2003.

(i) Refund or credit for gasoline or diesel fuel sold to or used by an exempt entity.

(1) A license holder, other than an aviation fuel dealer, may take a credit on a return for taxes paid on the purchase of gasoline or diesel fuel that is resold tax-free if the purchaser was one of the follow entities:

(A) the United States or federal government and the purchase is for its exclusive use. The federal government means any department, board, bureau, agency, corporation, or commission that the United States government has created or wholly owns. Exclusive use by the federal government means use of fuel only in motor vehicles or other equipment that the federal government operates. A person operating under a contract with the federal government is not an exempt entity. Evidence that sales were made to the federal government must be maintained and consist of:

(i) a United States tax exemption certificate--Standard Form 1094 or similar certificate that includes the same information as the Standard Form 1094; or

(ii) copies of the invoice(s) when a United States National credit card--Standard Form 149, was used for the purchase, which invoice must include the license plate number or official vehicle designation, if fuel is delivered into the fuel supply tank of a motor vehicle; or

(iii) a copy of a contract between the seller and the federal government supporting the sales invoices or purchase vouchers;

(B) a Texas public school district and the purchase is for its exclusive use. Exclusive use by a public school district means use of fuel only in motor vehicles or other equipment that the public school district operates;

(C) a commercial transportation company with a contract to provide public school transportation services to a Texas public school district under Education Code, §34.008, and the gasoline or diesel is used exclusive to provide those services;

(D) a Texas non-profit electric cooperative organized under Utilities Code, Chapter 161, and telephone cooperative organized under Utilities Code, Chapter 162, and the purchase is for its exclusive use. Exclusive use by an electric or telephone cooperative means use of fuel only in motor vehicles or other equipment that the electric or telephone cooperative operates.

(2) An exempt entity enumerated in paragraph (1)(A)-(D) of this subsection, may claim a refund of taxes paid on gasoline or diesel fuel purchased for its exclusive use.

(j) Refund or credit for gasoline or diesel fuel exported from Texas or sold for export.

(1) A person may claim a refund or a licensed supplier, permissive supplier, distributor, importer, exporter, or blender may take a credit on a return for taxes paid on gasoline or diesel fuel that the person or the license holder exports from this state in quantities of 100 or more gallons. Proof of export must be one of the following:

(A) proof of export that United States Customs officials have certified, if the fuel was exported to a foreign country;

(B) proof of export that a port of entry official of the state of importation has certified, if the state of importation maintains ports of entry;

(C) proof from the taxing officials of the state into which the fuel was imported that shows that the exporter has accounted for the fuel on that state's tax returns;

(D) other proof that the fuel has been reported to the state into which the gasoline or diesel fuel was imported; or

(E) a common or contract carrier's transporting documents (see §3.439 of this title (relating to Motor Fuel Transporting Documents)) that list the consignor and consignee, the points of origin and destination, the number of gallons shipped or transported, the date of export, and the kind of fuel exported;

(2) A licensed supplier, permissive supplier or distributor may take a credit on a return for taxes paid on gasoline or diesel fuel resold tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter for immediate export from this state under the following circumstances:

(A) a shipping document or bill of lading issued by the seller that shows the destination state;

(B) the purchaser (exporter) is licensed in Texas as a supplier, permissive supplier, distributor, importer, or exporter; and

(C) the purchaser is licensed in the destination state to pay that state's tax; or

(D) if the destination is a foreign country, a shipping document or bill of lading issued by the seller that shows the foreign destination.

(3) Effective January 1, 2006, a licensed supplier or permissive supplier must collect either the destination state's tax or Texas tax from the purchaser on gasoline or diesel fuel exported to another state.

(k) Refund or credit for gasoline or diesel fuel loss by fire, theft, or accident. A person may claim a refund or a license holder may take a credit on a return for taxes paid on 100 or more gallons of gasoline or diesel fuel loss by fire, theft, or accident. The claimant must maintain records of the incident that establishes that the exact quantity of fuel that has been claimed as lost was actually lost, and that the loss resulted from that incident. The time limitation prescribed in subsection (c)(1) of this section is determined by the date of the first incident of a multiple incident loss that totals 100 gallons or more. A claim for refund for loss by fire, theft, or accident shall be accompanied by fire department, police department, or regulatory agency reports as appropriate.

(1) If the incident is a drive-away theft at a retail outlet (i.e., theft occurs when a person delivers gasoline or diesel fuel into the fuel supply tank(s) of a motor vehicle at a retail outlet without payment for the fuel), the following documentation shall be maintained:

(A) a police department report or evidence that the incident of drive-away theft has been or will be taken as a deduction on the federal income tax return during the same or the subsequent reporting period; and

(B) separate report for each incident that the employee(s) who witnessed the event prepared and signed. The report must include the date and time of occurrence, type of fuel, number of gallons, outlet location, and, if the theft is reported to a police department, the police case number.

(2) If the accidental loss was incurred through a leak in a line or storage tank, the minimum proof required is:

(A) a statement by the person who actually dug up or otherwise examined the hole or leak. Such statement should articulate the extent of the leak, the date of the examination, and the person's name and title; and

(B) a statement of the actual loss as determined by computing the measured inventory next preceding the discovery of the accidental leak, plus motor fuel salvaged from the leaky tank or line, if any, less intervening withdrawals for sale or use.

(3) A person claiming a refund or credit under this subsection must take inventory on the first of each month and promptly correct the inventory for any loss that has occurred in the preceding month. If inventories have not been accurately or timely measured, or if complete records have not been kept of all withdrawals for sale or use as required by law, a claim for refund or credit cannot be honored for payment.

(l) Refund or credit for gasoline or diesel moved between terminals. A licensed supplier or permissive supplier may take a credit on a return for tax paid on gasoline or diesel fuel removed from an IRS registered terminal that is transferred by truck or railcar to another IRS registered.

(m) Refund or credit for gasoline or diesel fuel sold to or purchased by a licensed aviation fuel dealer.

(1) A licensed supplier, permissive supplier, or distributor may take a credit on a return for tax paid on gasoline or diesel fuel sold to a licensed aviation fuel dealer for delivery solely into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of a licensed aviation fuel dealer.

(2) A licensed aviation fuel dealer may claim refund for tax paid on gasoline or diesel fuel delivered into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of another licensed aviation fuel dealer.

(n) Refund or credit for gasoline or diesel fuel used outside of Texas by a licensed interstate trucker. A licensed interstate truck may take a credit on a tax return for tax paid on gasoline or diesel fuel purchased in Texas and used outside of Texas in commercial vehicles operated under an interstate trucker license. The credit may be taken on the return for the period in which the purchase occurred. If the credit exceeds the amount of tax reported due on that return, the licensed interstate trucker:

(1) may carry forward the excess credit on any of the three successive quarterly returns until exhausted, or until the due date of the third successive quarterly return, whichever occurs first; or

(2) may seek refund of the excess credit by filing a claim for refund on or before the due date of the third successive quarterly return; or

(3) if returns are filed on an annual basis an interstate trucker may seek refund or credit no later than the due date of the annual return; and

(4) any remaining credit not taken on return or claimed as a refund before the prescribed deadline expires.

(o) Refund for gasoline or diesel fuel sold on Indian reservations. A retailer located on an Indian reservation recognized by the United States government may claim refund of tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain records that include the original purchase invoices that show that the state tax was paid and sales invoices that include:

(1) the name of the purchaser;

(2) the date of the sale;

(3) the number of gallons sold;

(4) the type of fuel sold; and

(5) a written statement that no state tax was collected or that it was a tax-free sale.

(p) The right to receive a refund or take a credit under this section is not assignable.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501305

Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.441

The Comptroller of Public Accounts adopts new §3.441, concerning documentation of imports and exports, import verification numbers, export sales, and diversion numbers, with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 499). The comptroller has deleted the statutory references in the title of the section to shorten the title.

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides requirements for a license holder to document imports and exports of motor fuel, procedure to obtain import verification and diversion numbers and conditions under which a license holder makes an export sale.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code. Title 2.

The new rule implements Tax Code, §§162.001, 162.004 and 162.016.

§3.441. Documentation of Imports and Exports, Import Verification Numbers, Export Sales, and Diversion Numbers.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Imports.

(1) Imports. Motor fuel imported into Texas by or for a seller constitutes an import by that seller. Motor fuel imported into Texas by or for a purchaser constitutes an import by that purchaser.

(2) Import Verification Number. An importer must obtain from the comptroller an import verification number for each load of gasoline or diesel fuel imported into Texas by truck or railroad tank car. An import verification number must be obtained within 72 hours before or after the gasoline or diesel fuel enters Texas. The importer must write the import verification number on the shipping document issued for that fuel.

(3) Documentation. An importer must possess a shipping document created by the terminal or bulk plant where the fuel was loaded (see §3.439 of this title (relating to Motor Fuel Transportation Documents) for motor fuel imported by any means into Texas).

(c) Export Sales.

(1) A licensed supplier, permissive supplier or distributor makes an export sale when it sells motor fuel in Texas to a licensed exporter, importer, distributor, supplier or permissive supplier who then, prior to any other sale or use in Texas, sends or transports the motor fuel outside the state. The bill of lading or shipping document must list the out of state destination.

(2) A licensed supplier, permissive supplier, or distributor who makes an export sale will not be liable for tax on motor fuel that the purchaser diverts provided that the seller issued a bill of lading or shipping document that shows that the fuel is to be delivered to a destination outside Texas.

(3) Documentation.

(A) The comptroller may request proof of export from the exporter to verify that the motor fuel was exported from Texas. This proof may consist of:

(B) proof of export that a U.S. customs office has certified, if the fuel was exported from this state to a foreign country;

(C) proof of export that a port of entry of the state of importation has certified, if ports of entry are maintained by that state;

(D) proof from the tax officials of the state into which the motor fuel was imported, which shows that the exporter has accounted for the motor fuel on the state's tax report; or

(E) other proof that the fuel has been reported to the state into which the motor fuel was imported.

(d) Diversion Number. An importer or exporter who diverts the delivery of a load of gasoline or diesel fuel being transported by truck or railroad tank car from the destination state or country that is preprinted on the shipping document that has been issued for that fuel to another state or country must obtain a diversion number from the comptroller. A diversion number must be obtained within 72 hours before or after the diversion. The importer, exporter, or common or contract carrier must write the diversion number on the shipping document issued for that fuel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501306
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.442

The Comptroller of Public Accounts adopts new §3.442, concerning bad debts or accelerated credit for non-payment of taxes, with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 500). The comptroller has deleted the statutory references in the title of the section to shorten the title.

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides the criteria necessary for a licensed distributor, supplier, or permissive supplier to file a claim for refund on the monthly return for a bad debt deduction or accelerated credit for the non-payment of tax, requirements for

repaying tax when payment is recovered, and criminal and civil penalties for issuing bad checks for the payment of fuel.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2

The new rule implements Tax Code, §§162.113, 162.116, 162.126, 162.214, 162.228, and 162.409.

§3.442. Bad Debts or Accelerated Credit for Non-payment of Taxes.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004, under Tax Code, Chapter 162. Motor fuel transactions that occur before January 1, 2004, are governed by provisions of Chapter 3, Subchapter L of this title, and promulgated under Tax Code, Chapter 153.

(b) Bad Debt Deductions. A licensed distributor, supplier, or permissive supplier may file a claim for refund on the monthly return of taxes paid on fuel that was sold on account that is later determined to be uncollectible, worthless, and previously written off as bad debt at the time that the distributor, supplier, or permissive supplier held an active license.

(1) The claim for refund must be in writing, state the fuel type (gasoline or diesel), state the beginning and ending date of sales on which the bad debt is claimed, the number of gallons, and the dollar amount of bad debts. The licensed distributor, supplier, or permissive supplier must establish the bad debt amount by providing information on the form required by the comptroller. Required information includes but is not limited to the following:

(A) the date of sale or invoice date;

(B) invoice fuel amount, and invoice fuel tax amount;

(C) the name and address of the purchaser, and if applicable, the licensed number of the purchaser;

(D) all payments or credits applied to the account of the purchaser; and

(E) uncollected amounts in the purchaser's account that were written off as bad debt in the distributor's, supplier's, or permissive supplier's records, including the number of gallons of fuel represented by the motor fuel portion of the bad debt.

(2) All payments and credits made by the purchaser must be applied to the purchaser's account to determine the bad debt amount, and if the purchaser's account also contains purchases of goods other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods sold to the purchaser. The comptroller will only allow a claim for refund of tax on the number of gallons represented by the motor fuel portion of the bad debt. The maximum amount of refund claimed cannot exceed the tax paid on the fuel sold on account that has been written off as a bad debt.

(3) A claim for refund of taxes based on a bad debt must be filed within four years from the date the account is entered in the distributor's, supplier's, or permissive supplier's books as a bad debt.

(c) Accelerated Credit. If a licensed supplier or permissive supplier reported and remitted taxes on a tax return for fuel sold on account to a purchaser who is licensed as a distributor or importer at the time of the transaction and who subsequently fails to pay the taxes to the seller, the licensed supplier or permissive supplier may take a credit against tax liability on a subsequent tax return if the licensed supplier or permissive supplier notifies the comptroller of the default within 60 days after the default occurs.

(1) The notification shall be provided in the form required by the comptroller, and credits may be taken beginning with the return for the reporting month in which the notification is made. When credits are taken on a return, the licensed supplier or permissive supplier must submit with that return information required by the comptroller.

(2) A licensed supplier or permissive supplier who fails to notify the comptroller of the default within the prescribed 60-day period cannot take a credit on a return, but may seek a refund of taxes based on bad debts subject to the requirements provided by subsection (b) of this section.

(3) All payments and credits made by the purchaser must be applied to the purchaser's account to determine that non-payment amount, and if the purchaser's account contains the purchase of goods or items other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods or items sold to the purchaser. The comptroller will only allow a credit of tax on the number of gallons represented by the motor fuel portion of the unpaid amount. The maximum amount of credit taken cannot exceed the tax paid on the fuel sold on account that has been unpaid.

(4) If the notification of default was timely made to the comptroller, credits for taxes that were not collected from the licensed purchaser must be taken within four years from the date of default.

(5) A distributor, supplier, permissive supplier, or importer whose right to defer payment of tax to a supplier or permissive supplier has been suspended may seek reinstatement of the right to defer payment when all motor fuel tax liability has been satisfied and considered in good standing with the comptroller. The distributor, supplier, permissive supplier, or importer must request that the comptroller issue a notice of good standing for motor fuel taxes.

(d) Credit card sales. The refund for bad debts or credit for non-payment of taxes allowed under this section does not apply to sales of fuel that is delivered into the supply tank of a motor vehicle or motorboat when payment is made through the use and acceptance of a credit card. For purpose of this section, a credit card is defined as any card, plate, key, or like device by which credit is extended to and charged to the purchaser's account. Credit sales to commercial or agricultural customers at locations not open to the general public are eligible to the bad debt credit.

(e) A supplier, permissive supplier, or distributor who collects all or part of an account that was written off as a bad debt for which a refund was sought under subsection (b) of this section or who collects all or part of the unpaid tax after a credit was taken under subsection (c) of this section, must report and remit the collected amount on the return that is due for the reporting period in which the bad debt was originally claimed. The comptroller may assess a deficiency, including 10% penalty at the rate provided by Tax Code, §111.060, if the amount recovered is not reported and tax is not paid to the state during the month in which the recovery is made. Interest will accrue from the date the credit was taken.

(f) If the comptroller determines that a taxpayer obtained a refund from the comptroller or took a credit on a return when he knew or should reasonably have known that the account or tax was collectible, the comptroller may issue a deficiency for the tax plus 10% penalty and interest imposed from the date the refund was granted or the credit taken. In addition, other penalties provided by this section or by Tax Code, Chapters 111 or 162, may be imposed.

(g) The comptroller may issue a deficiency assessment for tax, plus penalty and interest applicable under Tax Code, Chapter 111, against the purchaser whose account was the subject of a refund for bad debt obtained or a credit claimed by a distributor, supplier, or permissive supplier.

(h) Criminal and civil penalties for issuing bad checks.

(1) A person commits an offense if he issues a check to a licensed distributor, licensed supplier, or permissive supplier for the payment of fuel knowing that his account with the bank on which the check is drawn has insufficient funds and if the payment is for an obligation that includes tax imposed by Tax Code, Chapter 162, that is required to be collected by the licensed distributor or licensed supplier. The offense is a Class C misdemeanor.

(2) If a licensed distributor, licensed supplier, or permissive supplier receives an insufficient fund check causing a refund to be sought or a credit taken in accordance with the provisions in this section, the licensed distributor or licensed supplier may notify the comptroller of the receipt of the insufficient fund check. When making the notification, a photocopy of both sides of the returned check should be furnished.

(3) A person who issues an insufficient fund check to a licensed distributor, licensed supplier, or permissive supplier for payment of an obligation that includes tax imposed by Tax Code, Chapter 162, that is required to be collected by the licensed distributor, licensed supplier, or permissive supplier may be assessed a penalty equal to 100% of the total amount of tax not paid to the licensed distributor, licensed supplier, or permissive supplier. This penalty is in addition to any penalties, interest, and collection actions authorized by the Tax Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501307
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.444

The Comptroller of Public Accounts adopts new §3.444, concerning temperature adjustment conversion table and metering devices, with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 502). The comptroller has deleted the statutory references in the title of the section to shorten the title.

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides the method to be used to temperature adjust a volume of gasoline or diesel fuel to 60 degrees Fahrenheit and describes the frequency and methods required to test and maintain the accuracy of meters and thermometers used to measure the temperature of gasoline and diesel fuel.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code. Title 2.

The new rule implements Tax Code, §162.103 and §162.202.

§3.444. Temperature Adjustment Conversion Table and Metering Devices.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Temperature adjustment method. For the purpose of conversion of actual gasoline and diesel fuel volume to equivalent volume of 60 degrees Fahrenheit, Table 6B of revised ASTM-API-IP Petroleum Measurement Tables may be used in lieu of any conversion table which the comptroller may issue.

(c) Testing and accuracy of meters and thermometers or other devices designed to accurately measure the temperature of fuel. Meters must be tested each 90 days or after 10 million gallons through-put, whichever occurs first. The accuracy of any meter being used must be maintained within 1% of correct volume during all loading or unloading operations. The tests of meters shall be determined by the methods provided by the American Society of Mechanical Engineers- American Petroleum Institute for the Installation, Proving and Operation of Meters in Liquid Hydrocarbon Service. Thermometers or other devices designed to accurately measure the temperature of fuel must be tested each 90 days and must conform to standards set by the American Society of Mechanical Engineers-American Petroleum Institute or National Bureau of Standards.

(d) Records. A record of all tests must be maintained and open for examination by the comptroller for a period of four years.

(e) Posting of results. The results of the most recent tests on all meters and thermometers or temperature measuring devices being used must be posted in a conspicuous place at each terminal where the tests are required.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501308
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.446

The Comptroller of Public Accounts adopts new §3.446, concerning electronic filing of reports, civil penalties, and deferred tax payments, with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 502). The comptroller has deleted the statutory references in the title of the section to shorten the title.

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides requirements for electronic filing of reports and schedules by licensed suppliers, permissive suppliers, distributors, importers, exporters, blenders, motor fuel transporters, and terminal operators, conditions under which a civil penal may be assessed for failure to file reports or failure to file reports electronically when required to do so, and deferred tax payments to licensed suppliers and permissive suppliers by licensed suppliers, permissive suppliers, distributors and importers.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Tax Code, Title 2.

The new rule implements Tax Code, §§162.114, 162.116, 162.118, 162.119, 162.120, 162.121, 162.122, 162.123, 162.215, 162.217, 162.219, 162.220, 162.221, 162.222, 162.223, 162.224, and 162.402.

§3.446. Electronic Filing of Reports, Civil Penalties, and Deferred Tax Payments.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Electronic filing of reports and schedules.

(1) The comptroller may require a supplier, permissive supplier, distributor, importer, exporter, blender, or motor fuel transporter to file reports and schedules by means of electronic transmission under the following circumstances:

(A) the combined total number of gallons of gasoline and diesel fuel that a licensed supplier, permissive supplier, distributor, importer, exporter, or blender receives during the preceding 12 months exceeds five million gallons, or the total number of transactions that a licensed supplier, permissive supplier, distributor, importer, exporter, or blender reports on the monthly report schedules exceeds 100 transactions each month for three consecutive months on an individual license basis; or

(B) the total number of transactions that a motor fuel transporter reports on the quarterly report schedules exceeds 100 transactions.

(2) For the purpose of this section, one transaction means a single purchase, sale, import, or export of gasoline or diesel fuel, or the summary of multiple purchases, sales, imports, or exports of gasoline or diesel fuel during a reporting period, when the seller, purchaser, fuel type, motor fuel transporter, origin state or country, and destination state or country are the same.

(3) The taxpayer or its authorized agent shall enter into a written agreement with the comptroller to permit electronic filing of reports and schedules. The signature of the taxpayer or its authorized agent on the written agreement into which the parties enter for this purpose shall be deemed to appear on each report filed electronically.

(4) Electronic transmission of each report and schedule shall be made in a format that the comptroller approves and that is compatible with the comptroller's equipment and facilities.

(5) The comptroller shall notify the taxpayers to whom this subsection applies no less than 90 days before the taxpayer is required to begin filing its reports and schedules electronically.

(6) Suppliers, permissive suppliers, distributors, importers, exporter, blenders, and motor fuel transporters who are required to file reports and supplements electronically, but are unable to do so, may request a waiver from the comptroller.

(7) The license of a supplier, permissive supplier, distributor, importer, exporter, blender, or motor fuel transporter who is required to file electronically may be suspended if the supplier, permissive supplier, distributor, importer, exporter, blender, or motor fuel transporter fails to file reports and schedules by means of electronic transmission in an approved format, after being notified of such requirement.

(8) A terminal operator must file reports and schedules electronically.

(c) Civil penalty.

(1) A motor fuel transporter who is required to file reports and schedules and who fails to do so, after being notified of such requirement, may be assessed a penalty not to exceed $200 for each report period and $25 for each reportable transaction. Each calendar quarter that a motor fuel transporter fails to file a report with the comptroller is a separate violation. The comptroller will send notice to the motor fuel transporter about the assessment of the penalty. The motor fuel transporter may request a redetermination under the terms of §§1.1-1.42 of this title (relating to Rules of Practice and Procedure). An oral hearing at the office of the Comptroller of Public Accounts in Austin, Texas, may be requested. The standard of proof in an administrative hearing pursuant to this section is by a preponderance of the evidence, unless otherwise provided by statute.

(2) A motor fuel transporter or terminal operator who is required to file reports and schedules electronically and who fails to do so in an approved format, after being notified of such requirement, may be assessed a penalty not to exceed $200 for each report period and $25 for each reportable transaction. The comptroller will send notice to the motor fuel transporter or terminal operator about the assessment of the penalty. The motor fuel transporter or terminal operator may request a redetermination under the terms of §§1.1-1.42 of this title (relating to Rules of Practice and Procedure). An oral hearing at the office of the Comptroller of Public Accounts in Austin, Texas, may be requested. The standard of proof in an administrative hearing pursuant to this section is by a preponderance of the evidence, unless otherwise provided by statute.

(d) Deferred tax payments.

(1) A licensed supplier, permissive supplier, distributor, or importer ordering a withdrawal of motor fuel at a terminal rack may elect to defer the payment of taxes to a supplier or permissive supplier until two days before the supplier or permissive supplier is required to remit the tax to the state. If two days before the report due date falls on a weekend or banking holiday, then the payment to the supplier or permissive supplier is to be made on the last business day prior to the weekend or banking holiday. For example, if the due date falls on a Tuesday the 25th, then the supplier or permissive supplier may draft the account on Friday the 21st.

(2) A supplier, a permissive supplier, or its representative shall give at least a two day notice by electronic means of the amount to be drafted from the account of the supplier, permissive supplier, distributor, or importer. If two days before the date the bank account is to be drafted falls on a weekend or banking holiday, then the notice to the supplier, permissive supplier, distributor or importer is to be made

on the last business day prior to the weekend or banking holiday. For example, if the due date falls on a Tuesday the 25th, then the supplier or permissive supplier must give notice on Wednesday the 19th.

(3) The supplier, permissive supplier, distributor or importer shall pay the taxes to the supplier or permissive supplier by electronic funds transfer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501309
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER W. AMUSEMENT MACHINE REGULATION AND TAX

34 TAC §3.601

The Comptroller of Public Accounts adopts an amendment to §3.601, concerning definitions, changes in ownership, gross receipts regulations, and record keeping requirements, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 504). This section is amended to provide notification and record keeping requirements.

Subsection (b)(2) is amended to require general business license holders to file written notification of change of ownership of a machine, as required for registration certificate holders. Subsection (d)(1)(F) is amended to require that directions to a location included in a licensee's records when location address is a rural route and box number. Subsection (d)(1)(G) is amended to require that the notification of change of machine ownership is included in a licensee's records.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Occupations Code, §2153.201 and §2153.202.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501310
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.602

The Comptroller of Public Accounts adopts an amendment to §3.602, concerning licenses and certificates, renewals and due dates, occupation tax permits and exemptions, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 505).

This section is amended to update incorrect statutory references. The legislature changed the penalty for operating without a license or registration certificate. The legislature codified the Coin-Operated Machine law as Occupations Code, Chapter 2153. Additional amendments are made to provide notification requirements.

Subsection (a)(4) is amended to require general business license holders to file written notification of change of ownership of a machine, as is required for registration certificate holders. Subsection (b)(1) is amended to correct the statutory penalty to a Class A misdemeanor. Subsection (c)(1) is amended to correct the statutory penalty to a Class A misdemeanor. Subsection (d)(4) is amended to require a written notification of change of machine ownership before a tax permit is assigned. Subsection (d)(7) is amended to update statutory reference to Occupations Code, §2153.005.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Occupations Code, §§2153.005, 2153.051, 2153.202, 2153.356 and 2153.404.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501311
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER AA. AUTOMOTIVE OIL SALES FEE

34 TAC §3.701

The Comptroller of Public Accounts adopts an amendment to §3.701, concerning reporting requirements, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 507).

The adopted amendment corrects the name of the Texas Natural Resource Conservation Commission (TNRCC) by changing the name to the Texas Commission on Environmental Quality (TCEQ).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements the Health and Safety Code, §371.062.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501312
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER KK. SCHOOL FUND BENEFIT FEE

34 TAC §3.1251

The Comptroller of Public Accounts adopts an amendment to §3.1251, concerning the school fund benefit fee, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 510).

This section is amended to correct statutory references to Tax Code, Chapter 153, motor fuels tax license holders, and §3.173, relating to refunds on gasoline and diesel fuel tax. The 78th Legislature, Regular Session (2003), replaced Tax Code, Chapter 153, with Chapter 162.

Subsection (b) is amended to correct references to Tax Code, Chapter 162, and to motor fuels license holders under the new code. Subsection (d) is amended to correct reference to Tax Code, Chapter 162. Subsection (c)(5) is amended to correct reference to §3.432, relating to refunds of gasoline and diesel fuel tax.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.002 and §111.0022, which provide the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the Comptroller administers under other law.

The amendment implements Tax Code, §162.204 and Transportation Code, Chapter 20, §20.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2005.

TRD-200501272
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 13, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-0387

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

♦ ♦ ♦

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter J (§§1.826 - 1.828; 1.830 - 1.841; and 1.845), relating to Authorized Lender's Duties and Authority; Subchapter K (§§1.851 - 1.858 and 1.860 - 1.863), relating to Prohibitions on Authorized Lenders; Subchapter P (§§1.901 - 1.902), relating to Registration of Retail Creditors; and Subchapter R (§§1.1301 - 1.1309), relating to Motor Vehicle Installment Sales Contract Provisions. This rule review will be conducted pursuant to §2001.039, Texas Government Code. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these subchapters continue to exist. Final consideration of the rules being reviewed under this notice is scheduled for the commission's meeting on May 20, 2005.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in these subchapters continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to sealy.hutchings@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-200501322
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: March 28, 2005

♦ ♦ ♦

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 85, relating to Rules of Operation for Pawnshops. This rule review will be conducted pursuant to §2001.039, Texas Government Code. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting this chapter continue to exist. Final consideration of the rules being reviewed under this notice is scheduled for the commission's meeting on May 20, 2005.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to sealy.hutchings@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-200501321
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 28, 2005

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §505.1(a)(8)

For 2 Color Printing

For Embossing

Figure: 30 TAC §37.9145

CERTIFICATE OF INSURANCE FOR COMMERCIAL LIABILITY

Name and Address of Insurer (herein called the "Insurer"):

_____

_____

Name and Physical and Mailing Addresses of Insured (herein called the "Insured"):

_____

_____

Additional Insured: Texas Commission on Environmental Quality
Physical Address: 12100 Park 35 Circle, MC 184, Austin, TX 78753
Mailing Address: MC 184, P. O. Box 13087, Austin, TX 78711-3087

Facilities covered: (*list for each facility: permit number, name, and physical and mailing addresses*)

Per Occurrence Limit: _____

Annual Aggregate Limit: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured a commercial liability policy of insurance identified above to provide coverage for bodily injury and property damage to compensate persons injured or property damaged as a result of Class B sewage sludge land application at the facilities identified above.

The Insurer further warrants that such policy conforms in all respects with the requirements of 30 Texas Administrative Code (TAC) §37.9100 (relating to Commercial Liability Insurance), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the Texas Commission on Environmental Quality, the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 TAC §37.9145 (relating to Certificate of Insurance for Commercial Liability) as such regulations were constituted on the date shown immediately below. The undersigned Insurer certifies that it is authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and it has a minimum financial strength rating of A- as assigned by the A.M. Best Company.

Authorized signature of Insurer: _____

Name of person signing: _____

Title of person signing: _____

Signature of witness or notary: _____

Date: _____

Figure: 30 TAC §37.9150

ENDORSEMENT FOR COMMERCIAL LIABILITY

1. This endorsement certifies that the policy to which the endorsement is attached provides commercial liability insurance coverage in connection with the Insured's obligation to demonstrate financial responsibility under 30 Texas Administrative Code (TAC) §37.9100 (relating to Commercial Liability Insurance). The coverage applies at (*list permit number if known, name, and physical and mailing addresses for each facility*) for bodily injury and property damage as a result of Class B sewage sludge land application at the above described locations. The limits of liability are $3,000,000 (Three Million U.S. dollars) per occurrence and $3,000,000 (Three Million U.S. dollars) annual aggregate of the Insurer's liability, exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy provided, however, that any provisions of the policy inconsistent with subparagraphs (A) - (H) of this paragraph are hereby amended to conform with subparagraphs (A) - (H).

(A) It guarantees bodily injury and property damage protection by allowing compensation to persons injured or property damaged as a result of Class B sewage sludge land application and entitled to compensation under the applicable provisions of state law.

(B) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this certificate of insurance is attached.

(C) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement from the Insured for any such payment made by the Insurer.

(D) Cancellation of the insurance, whether by the Insurer, the Insured, or a parent corporation providing insurance coverage for its subsidiary or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the executive director.

(E) Any other termination of this certificate of insurance will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by the executive director.

(F) Whenever requested by the executive director, the Insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.

(G) The Insurer shall notify the executive director within 30 days by certified mail in the event the insurance policy expires or is not renewed unless prior notice has been given in accordance with 30 TAC §37.9100 (relating to Commercial Liability Insurance).

(H) The Texas Commission on Environmental Quality is designated as an additional insured.

Attached to and forming part of policy No._____ issued by (*name of Insurer*), herein called the Insurer, of (*address of Insurer*) to (*name of Insured*) of (*address of Insured*) this ____ day of (*month, year*). The effective date of said policy is (*date*).

I hereby certify that the wording of this endorsement is identical to the wording specified in 30 TAC §37.9150 (relating to Endorsement for Commercial Liability) as such regulation was constituted on the date shown immediately below. The undersigned Insurer certifies that it is authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and it has a minimum financial strength rating of A- as assigned by the A.M. Best Company.

Signature of Authorized Representative of Insurer: _____

Date: _____

Type Name: _____

Title: _____, Authorized Representative of (*name of Insurer*)

Address of Representative: _____

Figure: 30 TAC §37.9155

CERTIFICATE OF INSURANCE FOR ENVIRONMENTAL IMPAIRMENT

Name and Address of Insurer (herein called the "Insurer"):

_____

_____

Name and Physical and Mailing Addresses of Insured (herein called the "Insured"):

_____

_____

Additional Insured: Texas Commission on Environmental Quality
Physical Address: 12100 Park 35 Circle, MC 184, Austin, TX 78753
Mailing Address: MC 184, P. O. Box 13087, Austin, TX 78711-3087

Facilities covered: (*list for each facility: permit number, name, and physical and mailing addresses*)

Per Occurrence Limit: _____

Policy Limit: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured an environmental impairment policy of insurance identified above to provide financial assurance for corrective action related to the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 Texas Administrative Code (TAC) §37.9105 (relating to Environmental Impairment Insurance), as applicable and as such regulations were constituted on the date shown immediately below.

It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the Texas Commission on Environmental Quality, the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 TAC §37.9155 (relating to Certificate of Insurance for Environmental Impairment) as such regulations were constituted on the date shown immediately below. The undersigned Insurer certifies that it is authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and it has a minimum financial strength rating of A- as assigned by the A.M. Best Company.

Authorized signature of Insurer: _____

Name of person signing: _____

Title of person signing: _____

Signature of witness or notary: _____

Date: _____

Figure : 30 TAC §312.82(a)(2)(A)(i)

$$D > \frac{131,700,000}{10^{0.1400t}}$$

D = time in days.
t = temperature in degrees Celsius.

Figure: 30 TAC §312.82(a)(2)(A)(iv)

$$D > \frac{50,070,000}{10^{0.1400t}}$$

D = time in days.
t = temperature in degrees Celsius.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of CERCLA Natural Resource Damages Claim

Notice is hereby given by the State of Texas of the following proposed resolution of an enforcement action filed on behalf of the Texas Commission on Environmental Quality against Dealey Limited, Inc. The Attorney General will consider any written comments received on the settlement within 30 days of the date of publication of this notice.

Case Title and Court: ***State of Texas v. Mack McConnell d/b/a Allied Radiator Service, Dealey Limited, Inc., and Yancy Mullin****, in the 98th Judicial District, Travis County, Texas, No. 95-01883.*

Background: This case concerns real property located at 2006 North Beckley, Dallas, Texas (the "the Site"). The Site is located approximately one mile west of downtown Dallas. Dealey Ltd., Inc., owns the Site. Yancy A. Mullin leased the Site from Dealey and subleased it to Mack McConnell d/b/a Allied Radiator Service. The North Beckley Site is now abandoned and all buildings on the Site have been razed. During its use by Allied Radiator, the Site and adjacent areas became contaminated with caustic solution containing lead. Two 300 gallon underground concrete storage tanks installed on the Site to receive waste were allowed to overflow. The runoff entered a ditch on the south side of the Site. Soil samples from the ditch and the tank overflow area and from sludge in the tanks indicated significant lead contamination at those locations.

Nature of the Settlement: Dealey will finance and perform remedial work and monitoring to address the contamination at the Site.

Proposed Settlement: The proposed settlement will resolve the Dealey Limited's liability to the State for violations of the Texas Health & Safety and Water Codes.

Public Comment: The Office of the Attorney General will receive comments relating to the proposed Agreed Final Judgment for 30 days following publication of this Notice. Comments should be addressed to Albert M. Bronson, Assistant Attorney General, Natural Resources Division, P.O. Box 12548, Austin, TX 78711-2548 and should refer to State of Texas v. Mack McConnell d/b/a Allied Radiator Service, Dealey Limited, Inc., and Yancy Mullin The proposed Agreed Final Judgment may be examined at the Office of the Attorney General, 300 West 15th Street, 10th Floor, Austin, Texas by appointment. A copy of the proposed Agreed Final Judgment may be obtained by mail from the Office of the Attorney General. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $3.75 for the Decree, payable to the State of Texas.

For information regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200501347
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 30, 2005

♦ ♦ ♦

Texas Health and Safety Code, Texas Water Code and Texas Clean Air Act Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: ***State of Texas v. Metroplex Quarry's, Inc.****, Cause No. GV402024, in the 53rd District Court, Travis County, Texas*

Nature of Defendant's Operations: Metroplex Quarry's, Inc. owned and operated a dimension limestone quarry facility located at 1405 Hess Road, Mineral Wells, Palo Pinto County, Texas. During a May 11, 2004 investigation, The TCEQ/Dallas/Fort Worth Regional Office conducted a storm water investigation and determined that storm water from the facility flows to Baker Creek, which flows into the Brazos River. Metroplex operated in violation of the Texas Water Code by failing to prevent a non-compliant discharge of sediment to waters of the state. In addition, Metroplex failed to include maintenance activities and fueling in a narrative description as activities that could be expected to contribute pollutants to storm water.

Proposed Agreed Judgment: The Agreed Final Judgment required Metroplex to pay the civil penalties in the amount of Thirty Thousand Dollars ($30,000.00), and attorney's fees in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00).

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200501345
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 29, 2005

♦ ♦ ♦

Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider

any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: ***State of Texas v. Osborn Stone Company, Inc.**, No. GV304647 in the 353rd District Court of Travis County, Texas.*

Nature of Defendant's Operations: Defendant engaged in rock quarry operations at a site in Palo Pinto County.

Proposed Agreed Judgment: The judgment contains an injunction that prohibits quarry and stone removal operations at the subject site, and prohibits pollution of the Brazos River. The judgment also requires the defendant to pay $75,000 in civil penalties and $30,000 in attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison at (512) 463-2110.

TRD-200501348
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 30, 2005

♦ ♦ ♦

Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Public Safety (DPS), announces the issuance of a **Request for Proposals (RFP) #303-5-10846**. TBPC seeks a ten (10) year lease of approximately 3,095 sq. ft. of office space in Alvin, Brazoria County, Texas, to accommodate a DPS Driver's License Issuance Office.

The deadline for questions is April 8, 2005 and the deadline for proposals is April 15, 2005 at 3:00 P.M. The award date is May 2, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58112.

TRD-200501292
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 24, 2005

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of a **Request for Proposals (RFP) #303-5-10573-A**. TBPC seeks a five (5) year lease of approximately 1,573 sq. ft. of office space in Houston, Harris County, Texas.

The deadline for questions is April 12, 2005 and the deadline for proposals is April 19, 2005 at 3:00 P.M. The award date is April 29, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58217.

TRD-200501328
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 28, 2005

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of a **Request for Proposals (RFP) #303-5-10772-A**. TBPC seeks a five (5) year lease of approximately 7,800 sq. ft. of office space in Houston, Harris County, Texas, to accommodate a Pardons and Parole Office.

The deadline for questions is April 15, 2005 and the deadline for proposals is April 22, 2005 at 3:00 P.M. The award date is May 6, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58218.

TRD-200501329
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 28, 2005

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Commission on Environmental Quality (TCEQ), announces the issuance of **Request for Proposals (RFP) #303-5-10836**. TBPC seeks a ten year lease of approximately 6,508 sq. ft. of office space (5,808SF Office/Lab Space & 700SF Boat Garage) in the Austin area, Travis County, Texas.

The deadline for questions is April 1, 2005 and the deadline for proposals is April 7, 2005 at 3:00 P.M. The award date is May 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on

the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58037.

TRD-200501330
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 28, 2005

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Public Safety, announces the issuance of **Request for Proposals (RFP) #303-5-10652-A**. TBPC seeks a five year lease of approximately 7,174 square feet of laboratory space in the Garland area, Dallas County, Texas. Leased facility is to be located in Garland area, including east to Rockwall, south to I-20 South, west to Loop 12 and north to I-30.

The deadline for questions is April 15, 2005, and the deadline for proposals is April 20, 2005, at 3:00 P.M. The award date is May 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58213.

TRD-200501343
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 29, 2005

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 18, 2005, through March 24, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 30, 2005. The public comment period for these projects will close at 5:00 p.m. on April 29, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Terrell James; Location: The project is located on the HL&P Outfall Canal and Clear Lake, in the Glen Cove Subdivision, Lots 41-47, along Cove Park Drive, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 301370; Northing: 3270733. Project Description: The applicant proposes to construct a 234-linear-foot bulkhead with backfill to reclaim eroded property for the purpose of constructing one or more house plots. The bulkhead will be in alignment with the neighbors' existing bulkheads. The 1,209 cubic yards of material used for backfill will impact approximately 13, 981 square feet (0.32 acre) of open water. The water depth at the proposed bulkhead is approximately -3.5 feet. CCC Project No.: 05-0187-F1; Type of Application: U.S.A.C.E. permit application #23673 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: BOSS Exploration and Production Corporation; Location: The project is located in State Tract (ST) 392 of Corpus Christi Bay, approximately 3.2 miles southeast of Port Ingleside, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 682500; Northing: 3077000. Project Description: The applicant proposes to drill the ST 392 Well No. 6, install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and a well head protector. CCC Project No.: 05-0198-F1; Type of Application: U.S.A.C.E. permit application #23695 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: BOSS Exploration and Production Corporation; Location: The project is located in State Tract (ST) 348 of Corpus Christi Bay, approximately 2.7 miles southeast of Port Ingleside, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 682250; Northing: 3077000. Project Description: The applicant proposes to drill the ST 348 Well No. 5, install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and a well head protector. CCC Project No.: 05-0199-F1; Type of Application: U.S.A.C.E. permit application #23696 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Stolt Nielson Transportation Group, Inc.; Location: The project is located on the north bank of Carpenter's Bayou, at 16300 DeZavalla Street, in Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: LaPorte, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 294593; Northing: 3291393. Project Description: The applicant proposes to perform maintenance dredging along their barge fleeting dock facility within Carpenter's Bayou. The dredge area measures a total of 1,743 linear feet by 75 feet in width, and will be excavated to a channel depth of -4 feet below the ordinary high tide elevation: totaling 19,366.67 cubic yards, and 3.0 acres of jurisdictional waters. All the dredge material will be disposed in a previously constructed (upland) placement area measuring 1.5 acres, located on the adjacent facility property. CCC Project No.: 05-0201-F1; Type of

Application: U.S.A.C.E. permit application #23675 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Freeport LNG Development, LP; Location: The project site is located on Quintana Island, on property leased from the Brazos River Harbor Navigation District, along the Freeport Harbor Channel and the Gulf Intracoastal Waterway (GIWW), near the City of Freeport, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 275192; Northing: 3203304. Project Description: The applicant is requesting authorization to modify Department of the Army (DA) Permit Number 23078 to construct an additional temporary barge dock to offload sand and aggregate materials necessary to facilitate the construction of the Freeport LNG Terminal facilities. The proposed dock would consist of a 400-foot-long sheet pile bulkhead that would require the discharge of approximately 587 cubic yards of fill into two small areas immediately behind the bulkhead to stabilize the shoreline.

In addition, the applicant would dredge the area immediately in front of the bulkhead to a depth of -13.5 feet plus 1-foot allowable overdepth to provide barge access. Approximately 35,000 cubic yards of material will be excavated from the area and placed into the adjacent Dredged Material Placement Area (DMPA) No. 2/3. The applicant also proposes to place 8 mooring piles behind the proposed sheet pile bulkhead. The proposed dock meets the Corps' setback requirements and is not expected to interfere with federal maintenance dredging activities scheduled to occur in the GIWW. In addition, the applicant will not be permitted to double up barges at the site or to direct bright lighting toward the GIWW due to potential hazards to navigation.

The area to be impacted as a result of this proposal is associated with the original project's compensatory mitigation plan. A 0.22-acre area was to be planted with Spartina alterniflora to compensate for impacts associated with the original authorization. This 0.22-acre wetland area will be relocated farther west of the currently authorized location. Upon completion of the construction of the LNG terminal facilities, the barge dock will be removed and the dredged area will be put back to its original contours. The entire 400-footlong stretch of shoreline will then be planted with Spartina alterniflora. CCC Project No.: 05-0204-F1; Type of Application: U.S.A.C.E. permit application #23078(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Orange County Navigation District; Location: The project site is located in wetlands adjacent to Cow Bayou, north of FM 105 near the town of Orangefield, from the Union Pacific Railroad to the confluence of Cow Bayou, south of the City of Orange, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 417318; Northing: 3329411. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 0.11 acre of wetlands and to properly permit the unauthorized excavation of 0.97 acre of open water habitat associated with the maintenance dredging of Cole Creek. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage way was approximately 2,117 linear feet. The dredging activity resulted in the excavation of approximately 1,565 cubic yards of silty-clay material, all of which was subsequently sidecast and discharged into 0.11 acre of jurisdictional wetlands. The 0.11-acre wetland area that was impacted as a result of the activity is characterized as a freshwater forested marsh. The open water area that was affected is also freshwater. A total of 1.08 acres of waters and jurisdictional wetlands were impacted as a result of the project.

To compensate for impacts to the aquatic environment, approximately 0.11 acre of freshwater forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. In addition, the applicant has conducted onsite mitigation in the form of planting. A total of 200 cypress, 200 water oak, and 350 tupelo trees have been planted on the site. CCC Project No.: 05-0205-F1; Type of Application: U.S.A.C.E. permit application #23694 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501320

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 28, 2005

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 04/04/05 - 04/10/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 04/04/05 - 04/10/05 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005[3] for the period of 04/01/05 - 04/30/05 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 04/01/05 - 04/30/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-200501336
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 29, 2005

♦ ♦ ♦

Texas Commission on Environmental Quality

Notice of a Meeting to Discuss Deletion of the McNabb Flying Service from the State Superfund Registry

Notice of meeting on May 26, 2005 at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building D, Room 200-33, Austin, Texas, concerning the McNabb Flying Service Proposed state Superfund site. The purpose of the meeting is to obtain public input and information concerning the proposal to delete the site from the state Superfund registry.

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing a notice of deletion of the McNabb Flying Service site (the site) from the state Superfund registry. The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the site has been accepted into the Voluntary Cleanup Program.

The site was originally proposed for listing on the state registry on November 12, 1999. The site, including all land, structures, appurtenances, and other improvements, is approximately 70 acres located at the southeast corner of County Road 146 and County Road 533, Alvin, Brazoria County, Texas. The site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

McNabb Flying Service was initially operated as a pilot school; however, the exact dates of this operation are unknown. After the flying school ceased operations, the site owner's son, Frank McNabb, began operations as an aerial pesticide application service. After Frank McNabb retired, the pesticide application service was operated for about another year by Frank McNabb's son, Toby McNabb. It is not known when Toby McNabb ceased operations. The TCEQ inspected the site and noted numerous drums and other containers of various sizes containing pesticides, solvents, paint, and other unknown materials. In addition to the drums and containers, the soil appeared to be impacted. TCEQ collected several soil and groundwater samples. The results of the soil samples indicated that the site was impacted by various pesticides and heavy metals.

The site has been accepted into the TCEQ Voluntary Cleanup Program and is therefore eligible for deletion from the state registry as provided by 30 TAC §335.344(c).

In accordance with 30 TAC §335.344(b), the commission will hold a public meeting to receive comments on this proposed deletion. This meeting will not be a contested case hearing within the meaning of Texas Government Code, Chapter 2001. The meeting will be held on May 26, 2005, 10:30 a.m. at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building D, Room 200-33, Austin, Texas.

All persons desiring to make comments regarding the proposed deletion of the site may do so prior to, or at, the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. May 25, 2005, and should be sent in writing to Carol Boucher, P.G., Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 143, P. O. Box 13087, Austin, Texas 78711-3087, or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting of May 26, 2005.

A portion of the record for the site including documents pertinent to the executive director's proposed deletion is available for review during regular business hours at the Alvin Branch Library, 105 South Gordon Street, Alvin, Texas, (281) 388-4300. Copies of the complete public file are available for viewing during regular business hours at the commission's Records Management Center, Building E, First Floor, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-5674. Requests should be made as far in advance as possible.

For further information about the public meeting, please call John Flores at (800) 633-9363.

TRD-200501333
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 29, 2005

♦ ♦ ♦

Notice of Public Hearing by the Texas Commission on Environmental Quality on Proposed Revisions to 30 TAC Chapters 37 and 312

The Texas Commission on Environmental Quality will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 37, Financial Assurance, §§37.9090, 37.9095, 37.9100, 37.9105, 37.9110, 37.9115, 37.9120, 37.9125, 37.9130, 37.9135, 37.9140, 37.9145, 37.9150, and 37.9155; and to 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation, §§312.4, 312.8 - 312.13, 312.44, 312.48, 312.82, 312.122, and 312.145, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001.

The proposal would provide additional restrictions and requirements for persons who land apply Class B sewage sludge to help ensure more protection for citizens, land, and water.

A public hearing on this proposal will be held in Austin on May 3, 2005 at 10:00 a.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2003-055-312-WT. Comments must be received by 5:00 p.m., May 9, 2005. For further information, please contact Beth Fraser, Water Quality Division, (512) 239-2526.

TRD-200501281
Stephanie Bergeron Purdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 24, 2005

♦ ♦ ♦

Notice of Public Hearing on Proposed Revisions to Chapter 101 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 101, General Air Quality Rules, and corresponding revisions to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would extend the expiration date of June 30, 2005 to January 15, 2006, unless the commission submits a revised version of §§101.221 - 101.223 to the EPA for review and approval. If the commission submits these revisions to the EPA, these sections would expire on June 30, 2006.

A public hearing on this proposal will be held in Austin on April 26, 2005 at 2:00 p.m., in Building A, Room 328 at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2005-023-101-AI, and must be received by 5:00 p.m., April 26, 2005. For further information, please contact Ramiro Garcia, Field Operations Division at (512) 239-4481 or Steve Ligon, Field Operations Division at (512) 239-1527.

TRD-200501288
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 24, 2005

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued during the period of March 23, 2005 through March 29, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF AUSTIN has applied for a renewal of TPDES Permit No. 10543-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located north of the Colorado River, approximately 1 mile east of the U.S. Highway 183 crossing of the Colorado River in Travis County, Texas.

CITY OF BIG LAKE has applied for a major amendment to TPDES Permit No. 10038-001 to authorize construction of a new mechanical wastewater treatment facility. The current pond system is authorized the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day. The proposed amendment requests to reduce the discharge of treated domestic wastewater at a daily average flow of 350,000 gallons per day in the final phase. The facility will be located approximately 530 feet south of U. S. Highway 67, approximately 1.14 miles east of the U. S. Highway and the State Highway 137 intersection in Reagan County, Texas.

CITY OF CORPUS CHRISTI has applied for a renewal of TPDES Permit No. WQ0010401005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 1402 W. Broadway approximately 3000 feet east of the intersection of Broadway and North Port Avenue in the City of Corpus Christi in Nueces County, Texas.

ENCINAL WATER SUPPLY CORPORATION has applied for a renewal of Permit No. 13943- 001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 95,000 gallons per day via irrigation of 40 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1,950 feet southeast of the intersection of U.S. Highway 81 and Interstate Highway 35 in Webb County, Texas.

EQUILON ENTERPRISES LLC DBA SHELL OIL PRODUCTS U.S. which operates a groundwater treatment system for a site remediation of a petroleum bulk station, has applied for a major amendment to TPDES Permit No. WQ0001437000 to authorize removal of storm water Outfalls 001, 002 and 003 from the permit, and the discontinuance of requirements for toxicity testing and a decrease in monitoring frequency for pH, flow, oil and grease and biochemical oxygen demand (5-day) at Outfall 004. The current permit authorizes the discharge of treated groundwater at a daily average flow not to exceed 36,000 gallons per day via Outfall 001 (former Outfall 004). The facility is located at 2700 South Grandview Avenue, Odessa ,Ector County, Texas.

FARCO MINING, INC. which operates Palafox Mine, a surface coal mine, has applied for a renewal of TPDES Permit No. WQ0002733000, which authorizes the discharge of storm water from the active mining area on an intermittent and flow variable basis via Outfall 001, storm water from the post-mining area on an intermittent and flow variable basis via Outfall 101, and storm water from the coal preparation plant and associated area on an intermittent and flow variable basis via Outfall 002. The facility is located west and

adjacent to Farm-to-Market Road 1472 at a point approximately 24.75 miles northwest of the intersection of Farm-to-Market Road 1472 and Farm-to-Market Road 3338, near the City of Laredo, Webb County, Texas.

LA JOYA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13523-002, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 15,000 gallons per day via subsurface pressure system with a minimum area of 0.96 acre. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on Farm-to-Market Road 492 (Doffing Road), approximately 3,000 feet south of the intersection of Farm-to-Market Road 676 and Farm-to-Market Road 492 in Hidalgo County, Texas.

CITY OF PHARR has applied for a renewal of TPDES Permit No. 10596-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The facility is located adjacent to South "I" Road, approximately 1.9 miles south of the intersection of South "I" Road and U.S. Highway 83 Business in Hidalgo County, Texas.

PRAXAIR, INC. which operates an air separation plant which produces liquid and gaseous Oxygen, Nitrogen, and Argon, has applied for a renewal of TPDES Permit No. WQ0001173000, which authorizes the discharge of cooling tower blowdown, boiler blowdown, treated domestic wastewater, process wastewater (compressor condensate), and process area washwater at a daily average flow not to exceed 430,000 gallons per day via Outfall 001. The facility is located at the southwest corner of the intersection of Old Tidal Road and Port Terminal Railroad about 0.5 mile north of State Highway 225, north of the City of Deer Park, Harris County, Texas.

CITY OF SAN MARCOS has applied for a renewal of TPDES Permit No. 10273-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,000,000 gallons per day. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located on the north bank of the San Marcos River, approximately 4,000 feet east of the intersection of State Highway 123 and Interstate Highway 35 in the City of San Marcos in Hays County, Texas.

TRD-200501352
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 30, 2005

♦ ♦ ♦

Notice of Water Rights Application

Notices mailed March 29, 2005.

Application No. TP-5877; Enbridge Pipelines (E. Texas) L.P., 1600 N. Jackson, Jacksonville, Texas 75766, applicant, seeks a Temporary Water Use Permit pursuant to Texas Water Code 11.138 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code 295.1, et seq. Applicant seeks to divert and use up to 64.4 acre-feet of water for a period of fourteen days from the Neches River, Neches River Basin, Anderson County for industrial (hydrostatic testing of pipeline) purposes at a maximum diversion rate of 8.913 cfs (4,000 gpm). The diversion point will be located at Latitude 31.9756 N, Longitude 95.4498 W, at the Neches River crossing of the Enbridge Right of Way approximately 22 miles northwest of City of Rusk, Cherokee County and 11 miles west of the City of Jacksonville, Texas. Water not consumed will be returned to the place of diversion after the hydrostatic testing of the pipeline is completed. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on December 23, 2004. Additional information and fees were received on February 15, 2005. The application was accepted for filing and declared administratively complete on February 25, 2005. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 19, 2005.

PROPOSED PERMIT NO. 5878; Enbridge Pipelines (E. Texas) L.P., 1600 N. Jackson, Jacksonville, Texas 75766, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Temporary Water Use Permit pursuant to 11.138, Texas Water Code, and TCEQ Rules 30 Texas Administrative Code (TAC) 295.1, et seq. The applicant has requested authorization to divert and use not to exceed 17.19 acre-feet of water at a maximum diversion rate of 4.456 cfs (2,000 gpm) for a period of fourteen days from Martin Creek, tributary of Martin Lake, tributary of Sabine River, Sabine River Basin, for industrial (hydrostatic testing of pipeline) purposes. The diversion point will be located at Latitude 32.1396° N and Longitude 94.6654° W, at the Martin Creek crossing of the Enbridge Right of Way approximately 8 miles east of the City of Henderson and 2 miles southwest of the City of Chapman in Rusk County. Water not consumed will be returned to the place of diversion after the hydrostatic testing of the pipeline is completed. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and partial fees were received on December 23, 2004. Additional information and fees were received on February 14, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 24, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by April 19, 2005.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200501351

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 29, 2005

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 23, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. C.R. Ashmore Family Partnership dba Opies Barbeque; SOAH Docket No. 582-05-2743; TCEQ Docket No. 2003-0686-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against C.R. Ashmore Family Partnership dba Opies Barbeque on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200501353
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 30, 2005

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 28, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Coastal Transport Company, Inc.; SOAH Docket No.582-04-6612; TCEQ Docket No.2003-1205-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Coastal Transport Company, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200501354
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 30, 2005

♦ ♦ ♦

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 30, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 30, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: APG & Z Inc. dba McKinney Food Store; DOCKET NUMBER: 2004-1428- PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Number 49369, Regulated Entity Reference Number (RN) 102049228; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: retail convenience store; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(2) COMPANY: Acme Brick Company; DOCKET NUMBER: 2003-1492-AIR-E; IDENTIFIER: Air Account Number PC0001E, RN100225184; LOCATION: Millsap, Parker County, Texas; TYPE OF FACILITY: brick manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Permit Number 25937, and THSC, §382.085(b), by failing to comply with the maximum allowable emission rate limits for sulfur dioxide and hydrogen chloride; PENALTY: $8,080; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Allanco Corporation dba KP Food Mart 3; DOCKET NUMBER: 2005-0263- PST-E; IDENTIFIER: PST Facility Identification Number 61298, RN102377611; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,520; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Azle; DOCKET NUMBER: 2003-1153-MWD-E; IDENTIFIER: National Pollutant Discharge Elimination System (NPDES) Permit Number TX0023116, Water Quality Permit Number 11183-003, RN101609873; LOCATION: Azle, Tarrant County, Texas; TYPE OF FACILITY: municipal wastewater; RULE VIOLATED: 30 TAC §305.125(1), NPDES Permit Number TX0023116, Water Quality Permit Number 11183-003, and the Code,

§26.121(a), by allowing exceedances of permitted ammonia-nitrogen effluent limits at the outfall; PENALTY: $12,075; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Bohica Investment, Ltd. dba Amigos 1; DOCKET NUMBER: 2004-1953-PST- E; IDENTIFIER: PST Facility Identification Number 30147, RN102399896; LOCATION: Alpine, Brewster County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (B)(ii), and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate and by failing to timely renew the delivery certificate; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(6) COMPANY: Bond Enterprises, Inc. dba Bond's First Stop; DOCKET NUMBER: 2005- 0192-PST-E; IDENTIFIER: PST Facility Identification Number 23775, RN102278785; LOCATION: Fairfield, Freestone County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Brownsville Val-Marts, L.L.C. dba Brownsville Val-Mart 6; DOCKET NUMBER: 2004-1831-PST-E; IDENTIFIER: PST Facility Identification Number 56810, RN103025938l; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding underground storage tank (UST) fees; PENALTY: $2,140; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Raheem Emiola dba Come & Go Food Store; DOCKET NUMBER: 2004- 1564-PST-E; IDENTIFIER: PST Facility Identification Number 19599, RN101811917; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,700; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: EMAG Solutions, LLC; DOCKET NUMBER: 2003-0723-MLM-E; IDENTIFIER: Air Account Number YB-0006-D, Solid Waste Registration Number 30926; LOCATION: Graham, Young County, Texas; TYPE OF FACILITY: magnetic tape manufacturing; RULE VIOLATED: 30 TAC §101.10 and THSC, §382.085(b), by failing to submit an emissions inventory questionnaire; 30 TAC §116.115(c), Air Permit Number 8714, and THSC, §382.085(b), by failing to maintain and provide the required reports that represent emissions from all emission point numbers and by failing to provide documentation that the facility conducted monitoring on a quarterly basis for fugitive emissions of all accessible valves; 30 TAC §335.6(c), by failing to notify the TCEQ of changes to waste management operations; and 30 TAC §335.62, by failing to conduct a hazardous waste determination on waste slurry; PENALTY: $22,000; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(10) COMPANY: Imad Abdelgader dba Express Lane Grocery; DOCKET NUMBER: 2004- 2087-PST-E; IDENTIFIER: PST Facility Registration Number 14890, RN102226537; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail gasoline sales; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test a line leak detector; and 30 TAC §334.10(b), by failing to have UST records readily available for inspection; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233- 4480, (210) 490-3096.

(11) COMPANY: FFP Operating Partners, L.P. dba Super Fresh Foods FFP 818; DOCKET NUMBER: 2004-2099-AIR-E; IDENTIFIER: Air Account Number EE1993E, RN102345634; LOCATION: San Elizario, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly offering for sale gasoline with an oxygen content lower than 2.7% by weight; PENALTY: $848; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(12) COMPANY: Flynn Water Supply Corporation; DOCKET NUMBER: 2004-1929-PWS-E; IDENTIFIER: Public Water Supply Number 1450005, RN101240844; LOCATION: Flynn, Leon County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i) - (iv) and THSC, §341.0315(c), by failing to provide the required well capacity of 0.6 gallons per minute per connection, by failing to provide the required total storage capacity of 200 gallons per connection, by failing to provide the required two or more service pumps, and by failing to provide the required pressure maintenance capacity of 20 gallons per connection; 30 TAC §290.44(d)(5), by failing to provide the water distribution system with sufficient valves and blowoffs; 30 TAC §290.42(j), by failing to ensure that required chemical certification was provided; and 30 TAC §290.41(c)(3)(B), by failing to provide a well casing 18 inches above the ground surface; PENALTY: $1,690; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Good Time Stores, Inc. dba Good Time Store 48; DOCKET NUMBER: 2004-2035-AIR-E; IDENTIFIER: Air Account Number EE0809I, RN102057593; LOCATION: Socorro, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly offering for sale gasoline with an oxygen content lower than 2.7% by weight; PENALTY: $800; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(14) COMPANY: City of Hughes Springs; DOCKET NUMBER: 2005-0165-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10415001, RN101919686; LOCATION: Hughes Springs, Cass County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10415001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for ammonia-nitrogen; PENALTY: $720; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: Joseph T. Gonzalez dba J & E Food Store; DOCKET NUMBER: 2005-0216- PST-E; IDENTIFIER: PST Facility Identification Number 37642, RN101445112; LOCATION: Harlingen, Cameron County, Texas; TYPE OF FACILITY: convenience store with

retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16) COMPANY: K & N Management, Inc. dba Rudy's Country Store and Bar-B-Q; DOCKET NUMBER: 2004-1995-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Plan File Number 1104092101, RN102138823; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: restaurant; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(17) COMPANY: KVN Oil & Gas, Inc. dba Story Fina; DOCKET NUMBER: 2004-1516-PST- E; IDENTIFIER: PST Registration Number 52763, RN102900925; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,910; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490- 3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Hirani Enterprises, Inc. dba Korner Food Store; DOCKET NUMBER: 2004- 2060-PST-E; IDENTIFIER: PST Facility Identification Number 7318, RN102366812; LOCATION: North Richland Hills, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Lyondell-Citgo Refining LP; DOCKET NUMBER: 2004-2002-AIR-E; IDENTIFIER: Air Account Number HG0048L, RN100218130; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Air Flexible Permit Number 2167/PSD-TX-985, and THSC, §382.085(b), by failing to comply with permitted emissions limits; and 30 TAC §101.20(a)(1)(B) and THSC, §382.085(b), by failing to submit a timely emission event report; PENALTY: $26,325; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Mack Massey Motors, L.P. dba Mack Massey Motors; DOCKET NUMBER: 2004-1694-PST-E; IDENTIFIER: PST Facility Identification Number 18758, RN102476041; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: retail car sales; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,960; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(21) COMPANY: Stephen Mathews; DOCKET NUMBER: 2005-0208-OSI-E; IDENTIFIER: On-Site Sewage Facility (OSSF) Installer License Number OS0017966, RN103627303; LOCATION: Joaquin, Shelby County, Texas; TYPE OF FACILITY: OSSF; RULE VIOLATED: 30 TAC §285.61(4) and (11) and THSC, §366.051(c), by failing to obtain proof of a permit and approved plan and by failing to request initial, final, or other required inspections from the permitting authority; and 30 TAC §285.5(a) and THSC, §366.053(a), by failing to submit planning materials and a permit application; PENALTY: $400; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Midway Independent School District; DOCKET NUMBER: 2005-0107-PST- E; IDENTIFIER: PST Facility Identification Number 47276, RN102006301; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: bus refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to ensure that release detection equipment or procedures are provided for the UST piping and tank system; and 30 TAC §334.7(d)(1), by failing to amend the UST registration; PENALTY: $1,352; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: NSA Investments Inc.; DOCKET NUMBER: 2004-0297-PST-E; IDENTIFIER: PST Facility Identification Numbers 39673 and 17911, RN102820875; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(iii) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored for releases, by failing to test a line leak detector, and by failing to provide proper release detection; 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the UST registration and self-certification form is submitted in a timely manner and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $12,025; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: New Ulm Water Supply Corporation; DOCKET NUMBER: 2004-1394-WQ- E; IDENTIFIER: TPDES Permit Number 0013655001, RN103136826; LOCATION: New Ulm, Austin County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0013655001, and the Code, §26.121(a), by failing to comply with the effluent limits for total suspended solids and total chlorine residual; PENALTY: $2,840; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Paradise Business Inc. dba Handi Plus 37; DOCKET NUMBER: 2004-1952- PST-E; IDENTIFIER: PST Facility Identification Number 63679, RN102838729; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Pritul Investment Inc. dba Citgo Cedar Hill; DOCKET NUMBER: 2004- 1679-PST-E; IDENTIFIER: PST Facility Identification Number 64485, RN100531805; LOCATION: Cedar Hill, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,640; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(27) COMPANY: Somoye Inc. dba Metro Stop; DOCKET NUMBER: 2004-1517-PST-E; IDENTIFIER: PST Facility Identification Number 52819, RN101868974; LOCATION: Boerne, Kendall County, Texas;

TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,210; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Sun Coast Resources, Inc.; DOCKET NUMBER: 2005-0047-PST-E; IDENTIFIER: RN100529452; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator of a UST has a valid, current delivery certificate; PENALTY: $600; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: United Equipment Rentals Gulf, L.P. dba United Rentals; DOCKET NUMBER: 2004-1946-AIR-E; IDENTIFIER: Air Account Number EE1203U, RN100810977; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: equipment rental stores with a refueling station; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly offering for sale gasoline with an oxygen content lower than 2.7% by weight; PENALTY: $820; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(30) COMPANY: Zuma International, Inc. dba Manchaca Food Mart; DOCKET NUMBER: 2005-0090-PST-E; IDENTIFIER: PST Facility Identification Number 11316, RN102356607; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200501337

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 29, 2005

♦ ♦ ♦

Proposed General Permit Number TXG670000, Executive Director's Response to Public Comment

The executive director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on General Permit No. TXG670000. As required by 30 Texas Administrative Code (TAC) §205.3(e), before a general permit is issued, the ED prepares a written response to all timely, relevant and material, or significant comments. The Response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit.

The Office of the Chief Clerk timely received comment letters from the following persons: City of Austin (Austin), ExxonMobil, Harris County Storm Water Quality Section (Harris County), Motiva Enterprises LLC (Motiva), Reliant Energy (Reliant), Save Our Springs Alliance (SOSA), and the Texas Chemical Council (TCC).

BACKGROUND

TCEQ is issuing a general permit in accordance with Texas Water Code (TWC), §26.040, General Permits and §26.121, Unauthorized Discharges Prohibited, that would authorize discharges of water resulting from the hydrostatic testing of vessels (pipelines, tanks, and other containers). Discharges from the following vessels will be authorized under this general permit: new vessels; existing vessels previously containing and/or transferring raw or potable water where the water used for hydrostatic tests does not contain corrosion inhibitors, antifreeze compounds, biocides, or other chemical additives (except chlorine); existing vessels that formerly contained only elemental gases (e.g., hydrogen, oxygen, nitrogen, etc.); and existing vessels previously containing product or waste related to refined petroleum products.

These discharges were previously authorized under 30 TAC Chapter 321, Subchapter G or under individual permits. The Memorandum of Agreement (MOA) between the United States Environmental Protection Agency (EPA) and TCEQ delegating the national pollutant discharge elimination system (NPDES) program dated September 14, 1998, prohibited further authorizations under current Chapter 321 rules, unless those rules were amended to authorize discharges to water of the United States only in accordance with NPDES requirements. The MOA authorized TCEQ to replace authorizations under Chapter 321, Subchapter G with a general permit. Notice of availability was published in the *Houston Chronicle* on July 12, 2003, and in the *Texas Register* on July 18, 2003. The comment period ended on August 18, 2003. No public meetings were held.

Comments and responses are organized by section with general comments first. Some comments have resulted in changes to the draft permit. Those comments resulting in changes have been identified in the respective responses. All other comments resulted in no changes.

COMMENTS AND RESPONSES

General Comments

Comment 1: SOSA requested that the permit exclude discharges to the recharge and contributing zones of the Edwards Aquifer. SOSA commented that the permit would allow discharges without requiring a Notice of Intent (NOI) to obtain authorization and would not require a permit for discharges that are "not expected to contain toxic or conventional pollutants." SOSA requested that TCEQ have secure and factual knowledge, based on a permit application, that discharges within the Edwards Aquifer recharge and contributing zones do not contain toxic or conventional pollutants.

Response 1: The permit would not exclude or exempt any dischargers of hydrostatic test water from needing an authorization to discharge. However, the application process to obtain authorization under this general permit differs, depending on the source of the discharge. Authorization to discharge from vessels previously containing petroleum products must be obtained by submitting an NOI.

Discharges from new vessels, existing vessels that previously contained either raw water, potable water, or elemental gas are not expected to contain toxic or conventional pollutants. Therefore, water discharged from these vessels is subject to different permit requirements and an authorization process that does not require the submission of an NOI. This alternative process is allowed by 40 Code of Federal Regulations (CFR) §122.28(b)(2)(v) and adopted by reference in 30 TAC §321.141, but it does not alleviate the responsibility of a discharger to comply with all applicable permit conditions, including effluent monitoring and reporting requirements.

Compliance with the applicable conditions of the Edwards Aquifer rules found in 30 TAC Chapter 213 is in addition to compliance with the requirements of this permit. When limited by this rule, as stated in Part II.B.2.(b), discharges are not eligible for authorization under this permit. Therefore, for clarification, and to avoid confusion between

the requirements of this general permit and the Edwards Aquifer rules, the second sentence of Part II.C.2. is revised to read: "Provisional authorization to discharge under the terms and conditions of this general permit begins 48 hours after a completed NOI is postmarked for delivery to the TCEQ."

Comment 2: Motiva commented that the NOI, notice of termination, and notice of change forms are not available for review and comment.

Response 2: Notice forms are not a part of the permit and are, therefore, not subject to public notice requirements and the formal comment period. The NOI, notice of change, and notice of termination forms will be consistent with the information required in 30 TAC §205.4, General Permits for Waste Discharges.

Cover Page

Comment 3: Harris County commented that the cover page of the permit authorizes the discharge of hydrostatic test water into or adjacent to "surface water in the state," while other areas of the permit reference only "water in the state." Harris County requested clarification as to whether discharges can occur into or adjacent to "surface water in the state" or "water in the state."

Response 3: In response to the comment, the cover page is revised to state that discharges may be "into or adjacent to water in the state." The permit contains the following definition of water in the state: "Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the state or inside the jurisdiction of the state." The definition in the permit is identical to the statutory definition found in TWC, §26.001(5).

Definitions

Comment 4: TCC asked in the context of "daily average concentration" what happens in a situation where there is only one sample for a discharge of one hour or less and where the last hydrostatic test occurred years ago. In that case, TCC asked whether the one sample result is reported as the daily average concentration.

Response 4: The definition of "daily average concentration" in the permit states that when four samples are not available within a single calendar month, the arithmetic average of the four most recent measurements may be reported as the daily average concentration. In TCC's example, the single sample result obtained during the reporting month would be reported as the daily maximum concentration and the reported daily average concentration would be the arithmetic average of the four most recent samples from preceding months or years. If there were only two previous samples to the current one, the reported daily average concentration would be the average of the three samples. If there were no previous samples, the reported daily average and the reported daily maximum concentration would be the single result.

In response to the comment, the definition of "daily average concentration" is revised to limit the samples to the most recent results subject to the daily average effluent limitation reporting requirements. The definition now reads: "The arithmetic average of all effluent samples within a period of one calendar month, consisting of at least four separate representative measurements. When four samples are not available in a calendar month, the arithmetic average of the four most recent measurements shall be used as the daily average concentration."

Comment 5: Reliant requested that the definition of the term "hyperchlorinated" include a numerical threshold to better define when an NOI would be required for a discharge from a vessel that has been chlorinated.

Response 5: Whether an NOI is required to obtain authorization under the permit is not dependant on whether the test water is hyperchlorinated, but on the previous contents of the vessel. An NOI is required for discharges from vessels that previously contained petroleum products. An NOI is not required for discharges from vessels that meet the requirements in Part II.A.1. - 3., including those that have been hyperchlorinated. However, those vessels where coverage does not require submitting an NOI and whose discharges are hyperchlorinated are still required to meet the total residual chlorine effluent limitations in Part II.A.1. Potable water (previously chlorinated by the water supplier for drinking water purposes) is not considered hyperchlorinated.

Comment 6: ExxonMobil and TCC commented that the definition of "petroleum product" is limited to a liquid at standard temperature and pressure. ExxonMobil stated that this limitation excludes petroleum derivatives, such as ethylene and propylene, which should have the same potential concerns as other petroleum products included in the definition. ExxonMobil requested that the phrase "which is liquid at standard conditions of temperature and pressure" be deleted from the definition. TCC asked if the definition restricts the discharge to vessels that contained product from a refinery or restricts the discharge of products from a chemical manufacturing plant (e.g., ethylene or styrene).

Response 6: TWC, §26.040(d) and 30 TAC §205.2(a), state that general permits may be developed for, in part, dischargers that engage in the same or substantially similar types of operations, discharge the same types of waste, are subject to the same requirements regarding effluent limitations or operating conditions, and are subject to the same or similar monitoring requirements. For purposes of the permit, the term "petroleum product" refers to those compounds typically found or produced at a petroleum refinery, most generally lubricating oils, fuels, and solvents as described in the definition. However, tanks and vessels do not have to be located at a refinery to be eligible for coverage under this permit. Defining the applicability of the permit through the use of the term "petroleum product" ensures that the requirements of TWC, §26.040(d) and 30 TAC §205.2(a), are met and that specific effluent limitations and requirements can be developed to ensure the protection of water quality.

In response to the comment, the definition of "petroleum product" is revised to delete the restriction that petroleum products must be liquid at standard temperature and pressure and the first sentence of the definition is modified to read: "Crude oil or any refined or unrefined fraction or derivative of crude oil."

Comment 7: ExxonMobil commented that excluding certain compounds from the definition of "petroleum products" should be done by providing a specific list of exclusions or by listing specific criteria, such as toxicity. As written, the exclusion (item (o) in the definition of "petroleum product") lists "examples of" compounds that are not considered petroleum products, suggesting that the list is not comprehensive. ExxonMobil commented that the exclusions in this definition should be deleted and specific exclusions, as warranted, should be included in the applicability section of Part II.

Response 7: Due to the volume of such material and its inherent potential for revision, providing a comprehensive list of materials not considered a petroleum product is impractical. The permit contains a definition of what is considered a petroleum product for the purposes of defining eligible discharges. The definition allows permittees to determine if a tank containing a certain material may be tested and discharged under the conditions of this permit.

Part II.A.

Comment 8: Motiva commented that Part II.A. does not mention tanks or vessels that held other types of materials and that may need hydro testing. Discharges of hydrostatic test water from tanks that contained a non-petroleum material, such as an amine tank, a chemical storage tank, or a sour water tank would not be covered under this permit. Motiva requested the TCEQ clarify that the discharge of hydrostatic test water from any tank, pipeline, vessel, or similar structure that has been hydro-tested prior to being put into service or returned to service may be covered under this permit.

Response 8: The permit was limited to specific categories of vessels so that the appropriate conditions and limitations to ensure the protection of receiving waters and compliance with Texas surface water quality standards could be included. Discharges of hydrostatic test water from vessels that contained substances that do not meet the definition of "petroleum product" are not eligible for authorization under this permit. Discharges of hydrostatic test water from such tanks are more appropriately authorized under individual permits or routed to another permitted facility for disposal. Discharges of hydrostatic test water from new vessels are eligible for coverage under this permit regardless of the intended future contents of the vessel.

Comment 9: ExxonMobil commented that Part II.A.2. restricts the addition of minor amounts of innocuous chemicals, such as tracer dyes, that may be added to test water. ExxonMobil requested that the permit include language providing for the use of other chemicals with the prior approval of the ED. ExxonMobil also commented that the general approval clause should be made available to both raw/potable water and petroleum service vessels. TCC asked if the term "other chemical additives" excludes tracer dyes.

Response 9: In response to the comment, Part II.A.2. is revised to read: "existing vessels that contain or previously contained or transferred raw or potable water, where the water used for hydrostatic tests does not contain corrosion inhibitors, antifreeze compounds, biocides, or other chemical additives (except chlorine or tracer dyes)."

Comment 10: ExxonMobil commented that although the TCEQ permitting structure does not apply to crude oil facilities, occasionally facilities have refined product services that were previously used for crude oil services. ExxonMobil requested that Part II.A.4. be modified as follows: "existing vessels which previously contained petroleum products or waste related to petroleum products."

Response 10: It is not the commission's intent to limit the ability of a discharger to release hydrostatic test water from a vessel that handles refined product based on the fact that it may have contained crude product in the past. The TCEQ has jurisdiction over a small category of dischargers who may need to hydrostatically test a vessel that has recently contained crude product. Therefore, Part II.A.4. is revised to read: "existing vessels that previously contained products or waste related to petroleum products."

Part II.B.

Comment 11: Motiva commented that Part II.B.2.(c) states that discharges shall not be prohibited by other applicable rules or laws. Motiva noted that individual permits that authorize the discharge of storm water have been interpreted to mean that only storm water may be discharged through the outfall listed in the individual permit. Motiva requested that the TCEQ clarify that hydrostatic test water may be discharged through "any existing outfall, or any other location if an existing permitted outfall is not readily available."

Response 11: Individual storm water permits are developed with site-specific conditions and may be issued to authorize the discharge of storm water runoff, wastewater, or a combination of discharges through a specifically defined outfall. Hydrostatic test discharges authorized under this permit may be discharged through an outfall that is regulated under a separate individual or general permit for another type of discharge, as long as the conditions of the separate permit do not prohibit the discharge and any required monitoring under this permit is conducted prior to commingling.

Part II.C.

Comment 12: ExxonMobil commented that some facilities, such as pipelines, operate under a single operator, but may have multiple points of discharge along a pipeline route. ExxonMobil suggested allowing a single NOI to cover multiple locations along a pipeline route that is controlled by the same operator. ExxonMobil stated that considerable resource savings could be achieved for both the operator and TCEQ if a single NOI could be used for the system. TCC asked if a company can list its entire pipeline system in one NOI with each discharge location specified or whether the TCEQ requires that each hydrostatic test be listed on its own NOI.

Response 12: Where an operator is performing hydrostatic testing on a specific pipeline, a single NOI may be submitted to cover those discharges. A single NOI could not be submitted for a system of pipelines or for pipelines operated by a single operator on a statewide basis.

Comment 13: Motiva commented that the permit does not clarify if a separate NOI is required for discharges from each individual tank at a facility. Motiva contends that for large facilities with multiple tanks, the administrative burden of submitting an NOI for each tank or vessel tested would be excessive. Motiva requested that the TCEQ clarify that a facility, such as a petroleum refinery, need submit an NOI only once and that coverage is then obtained for all hydrostatic test discharges from the facility for the life of the permit.

Response 13: A single NOI may be submitted to cover all hydrostatic discharges that occur at a single facility during the term of the permit. Alternatively, an applicant may submit an NOI on an event-by-event basis and then subsequently terminate coverage by submitting a notice of termination after each event.

Comment 14: TCC asked what would occur if the ED denies coverage for a discharge of hydrostatic test water after the applicant begins discharging as allowed under Part II.C.2.

Response 14: An applicant receives provisional authority and may begin discharging under the terms of the permit 48 hours after the NOI is postmarked for delivery to TCEQ. Following receipt of the NOI, TCEQ may acknowledge coverage or notify the applicant that authorization under this permit is denied. Once a discharger is notified that coverage is denied, subsequent discharges are not authorized under this permit. Discharges that occur in the time frame between submitting the NOI and the date when the permit authorization is denied are subject to the requirements of the permit and must comply with all permit conditions. An applicant must determine that the proposed discharge would otherwise qualify for coverage under the permit prior to submitting an NOI. There are significant penalties for knowingly submitting false information in an NOI.

Comment 15: Reliant commented that Part II.C.4.(a) should be modified to state that "the discharge is from a vessel listed in Part II.A.1. - 3. and is not hyperchlorinated." Austin commented that the term "not" was omitted from this sentence and that it should read "the discharge is not from a vessel. . .."

Response 15: Vessels listed in Part II.A.1. - 3. are not required to submit an NOI to obtain permit coverage, including those that have been hyperchlorinated. For those dischargers, the permit provides a separate authorization process that does not require submitting an NOI. However, dischargers from vessels listed in Part II.A.1. - 3. must comply with all applicable permit conditions, including effluent limitations and

reporting requirements. In response to the comments, Part II.C.4. was modified to state: "An NOI is not required if the discharger complies with all applicable permit conditions and: a) the discharge is from a vessel listed in Part II.A.1. - 3.; or b) the discharge is from a vessel listed in Part II.A.1. - 4. and it is land applied at the site with no resulting discharge into or adjacent to water in the state."

Comment 16: Austin recommended deleting the option in Part II.C.4.(b) that does not require submitting an NOI where discharges are land applied at the site with no resulting runoff to water in the state. Austin stated that discharges of test water that contain pollutants may result in contamination of the land where it is applied and could potentially seep into groundwater. If this option remains, Austin requested that the following phrase be added at the end of Part II.C.4.(b): ". . . including possible seepage to groundwater, and discharge is to a splash pad or paved area to prevent erosion."

Response 16: Discharges from vessels listed in Part III.A.1. - 4. are not required to submit NOIs to obtain authorization. However, dischargers must be in compliance with all applicable permit conditions, including effluent limitations in Part III.A.1. and 2. of the permit and must control the rate of discharge to prevent erosion according to Part III.B.1.(a). Permit conditions and effluent limitations for these discharges are established to provide protection for groundwater where treated effluent is irrigated. Additionally, the definition of "water in the state" includes groundwater, so the existing statement in the permit covers the possible discharge to groundwater.

Comment 17: TCC asked why Part II.C.5. requires submitting a notice of termination when the operator of the regulated entity changes, when in the TCEQ's own words: "Hydrostatic test discharges are intermittent, low volume, and short in duration." TCC wanted to know if this is evidence that TCEQ will allow an operator to cover all of its facilities within the state with a single NOI.

Response 17: An operator may not submit a single NOI to cover all of its facilities located in the state. The permit may be used to authorize discharges on an event-by-event basis or to authorize multiple, intermittent discharges of hydrostatic test water from an industrial facility over the duration of the permit term. Where an NOI is required for authorization, a single NOI may be submitted by a single facility to cover all eligible discharges that occur during the permit term at that facility. Alternatively, the facility may submit an NOI for each discharge and then subsequently terminate coverage by submitting a notice of termination. Where discharges are authorized without submitting an NOI, the permittee is also not required to submit a notice of termination when discharges cease. Only permittees that are required to submit an NOI to obtain permit coverage are required to submit a notice of termination to end permit coverage. Part II.D. of the permit is revised to clarify when a notice of termination is required for those vessels listed in Part II.A.4. Part II.D. relating to ending coverage under the permit now states: "A permittee may voluntarily terminate coverage under this general permit when the need to discharge is no longer necessary, e.g. the discharge is delayed or is completed. The permittee may also voluntarily terminate coverage if it obtains an individual permit. If the permittee was required to submit an NOI to obtain permit coverage, a notice of termination must be submitted to terminate permit coverage."

Part III.A.

Comment 18: Motiva commented that Part III.A. does not specify where to collect samples. Motiva requested that TCEQ clarify that monitoring samples are collected as the hydrostatic test water exits the vessel and that the hydrostatic test water may then comingle with other waters prior to discharge from the facility. Motiva also commented that although many tanks are tested and drained of water in a single discharge lasting less than one day, there are also instances when the test water is released intermittently over a period of weeks with no discharge on some days. Motiva contends that it is not clear whether sampling is required at the beginning and ending of each separate release from the tank or at the beginning and ending of the entire release period. Motiva requested TCEQ clarify that only a beginning and ending sample is required for the hydrostatic test release, regardless of the time interval between the start and finish of the release from the vessel. TCC commented that footnote 1 should be changed to: "The initial sample shall be taken during the first hour of discharge, a second sample shall be taken during the final hour of the discharge." TCC also requested that the same language be included in footnote 2 in Part III.A.2.

Response 18: Samples must be collected following release from the vessel and before the effluent combines with any other flows, including wastewater and storm water, regulated or unregulated, under another permit. After the sampling point the test waters may combine with other flows prior to discharge. In response to the comments, the language in Part III.A.1. subscript 1 and Part III.A.2 subscript 2 is modified to clarify that sampling is required at the beginning and ending of the discharge from the vessel, not for every separate release from the vessel. The subscripts now state: "Samples shall be taken during the first hour of discharge. Samples must be collected at a point immediately following discharge from the vessel and prior to commingling with storm water, wastewater, or other flows. For discharges that extend beyond an hour in duration, a second sample shall be taken of the last 10% of the effluent."

Comment 19: Austin requested that permittees be required to monitor discharges more frequently if the duration of the discharge exceeds one hour.

Response 19: The quality and character of the hydrostatic test discharge should be relatively consistent from the beginning to the end of the discharge. Therefore, the permit requires monitoring the initial and the final volume of the discharge for continuous discharges that exceed an hour in duration.

Comment 20: Reliant commented that the effluent limitation for total residual chlorine is too stringent and requested that the limit be set at 4.0 milligrams per liter (mg/l), which is the upper limit for residual chlorine found in the majority of permitted discharges from sewage treatment plants.

Response 20: The requirements for total residual chlorine are only applicable to discharges that are hyperchlorinated. This process is not comparable to the requirements for chlorination of treated domestic wastewater effluent at a sewage treatment plant. Hyperchlorination of water for immediate disinfection purposes produces a volume of water with an extremely elevated concentration of chlorine that is acutely toxic to aquatic organisms. In practice, reducing this extremely elevated level of chlorine requires the addition of an oxidizing agent that will result in the instantaneous reduction of chlorine to almost complete dechlorination, or less than 0.1 mg/l total residual chlorine.

Comment 21: Motiva commented that the permit specifies that TCEQ Method 1005 be used for the determination of total petroleum hydrocarbons (TPH) and that the daily maximum limitation is 15 mg/l. However, that test procedure states that: "Non-petroleum organic compounds which are soluble in n-pentane . . . will be quantified as part of the TPH. . .." Motiva commented that if the supply water being used for hydrostatic testing has a significant amount of organic compounds it would be possible to exceed the effluent limitation for TPH even when there is no actual petroleum hydrocarbon in the water. Motiva requested that the TCEQ allow an alternate method for TPH determination or allow facilities to test the supply water for TPH and to "back-out" any non-petroleum organic compounds for the hydrostatic test results.

Response 21: TCEQ chose to not allow the alternate method, EPA Method 1664A, due to the potential loss or lack of detection of low molecular weight components. Organic matter, such as suspended organic solids, are not expected to elevate the level of TPH in samples. These materials would not dissolve in n-pentane nor alter the reporting value for TPH. A permittee may elect to sample the ambient concentration of TPH to demonstrate how background concentrations are affecting reporting values. However, the concentration detected in the two samples collected during discharge is the concentration that must be reported on the Discharge Monitoring Report (DMR).

Comment 22: Motiva commented that with a benzene limit for hydrostatic test water of 0.005 mg/l it would be possible for matrix interference from the source water to cause the reporting limit to be above the limitation in the permit. Motiva requested that TCEQ authorize facilities to report non-detect in instances where interference causes the reporting limit to exceed permit limitations.

Response 22: One option for permittees is to analyze the ambient quality of water that will be utilized in the hydrostatic test and predict the potential for interferences in the laboratory analysis of benzene in the hydrostatic test water sample. If the result of the analysis is above the numeric effluent limitation due to interference, permittees may want to collect all relevant documentation from the laboratory to submit with their DMRs.

The numeric effluent limitation for benzene, 0.005 mg/l, was derived by directly applying the human health-based standard from the Texas Surface Water Quality Standards, delineated in 30 TAC §307.6(d)(1). The standard is based on the maximum contaminant level specified in 30 TAC Chapter 290 (relating to Water Hygiene) for treated potable water. However, 30 TAC §307.8 states that water quality standards do not apply to treated effluents at the immediate point of discharge and allows for reasonable dilution for specific human health criteria to prevent contamination of drinking water. Discharges to water bodies large enough to be designated as a public drinking water supply could be expected to experience at least a ten-fold dilution very near the discharge point and the water quality standard for benzene would be attained in the affected water body. Therefore, in response to the comment and in order to establish the effluent limitation in accordance with provisions of the Texas Surface Water Quality Standards, the numeric effluent limitation for benzene is revised to 0.05 mg/l. The numeric effluent limitation for total benzene, toluene, ethyl-benzene, and xylene (BTEX) is revised from 0.1 mg/l to 0.5 mg/l for consistency. Both revisions are consistent with existing numeric effluent limitations in Texas pollutant discharge elimination system (TPDES) General Permit TXG340000, authorizing similar discharges from petroleum bulk stations and terminals in Texas.

Part III.B.

Comment 23: Austin requested the addition of a requirement that the discharge not cause a significant sediment plume in receiving waters. Austin noted that this can cause problems with drinking water, aquatic organisms, and the reasonable uses of water in the state.

Response 23: It is not expected that discharges of hydrostatic test water would be a direct source of sediment. However, the permit contains requirements for the discharger to release the effluent to a splash pad and to control the rate of discharge in order to prevent or lessen erosion that could occur as a result of the discharge.

Comment 24: Austin requested the permit include a requirement that any discharge that appears to harm human health, safety, or the environment shall be terminated immediately.

Response 24: In response to the comment, Part III.B. is revised to include the following new provision number eight and the remaining provisions are renumbered accordingly. The new provision states that: "The permittee shall take necessary steps to prevent adverse effects to human health, safety, or to the environment. The permittee shall immediately cease discharging whenever it is determined the discharge may endanger human health, safety, or the environment."

Comment 25: Harris County commented that Part III.B.9. (now numbered Part III.B.10.) requires permittees to provide noncompliance notification to TCEQ following any noncompliance that may endanger human health or safety, but that the permit does not require notification of local agencies. Harris County requested the addition of a provision that would require permittees to report such non-compliance to local agencies. Harris County noted that such a provision would inform local agencies of serious issues of concern to their constituencies.

Response 25: This permit requires permittees to provide notice when they fail to comply with the permit, which is consistent with analogous requirements found in individual TPDES wastewater discharge permits. The permit specifically states that this permit does not limit the authority of a home-rule municipality as provided by Texas Local Government Code, §401.002 (see Part II.B.6.). MS4 operators may require notice of non-compliance as a condition for accepting permitted discharges to their system.

TRD-200501342
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 29, 2005

♦ ♦ ♦

Department of State Health Services

Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: Garland Veterinary Hospital, Garland, R01527; William Rowan Patterson, Jr., D.D.S., Texarkana, R00904; Laurence Melton, D.D.S., Dallas, R05077; Clifford J. Breaud, D.D.S., Inc., Lubbock, R08507; Stanley T. Zielinski, D.D.S., Houston, R11056; Westhollow Animal Hospital, Houston, R12077; Elliott Chiropractic Clinic, Liberty, R13940; Maddox Chiropractic Clinic, Austin, R16251; Medexchange, Inc., Dallas, R17291; Healthcomp Evaluation Services Corporation, Pittsburgh, Pennsylvania, R18833; Larin B. Perkins, D.C., PC, Houston, R18991; Richland Chiropractic Clinic, Richardson, R20316; Chevron Pipe Line Company, Houston, R21035; Kody J. Bonin, D.D.S., PC, Spring, R21083; George Franklin, D.D.S., PC, McAllen, R23955; Puhl Chiropractic Clinic, San Antonio, R25357; Leonard Dental Service, Euless, R27355; McNabb Chiropractic Clinic, Kilgore, R25363; Sara L. Halsell, D.C., Arlington, R26327; The Austin Clinic, LP, Austin, R26922.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within

30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Control Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501339
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 29, 2005

♦ ♦ ♦

Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following licensees: Oak Cliff Medical Foundation, Dallas, L00202; Triple G X-Ray and Testing Labs, Inc., Humble, L03136; Mobile Pet Systems, Inc., Houston, L05295; Caney Creek Trading Company, Houston, L05483; Globe Engineers, Inc., Plano, L05527.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Control Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501340
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 29, 2005

♦ ♦ ♦

Notice of Opportunity for Certification as a Retail Electronic Cash Register System for the Special Supplemental Nutrition Program for Women, Infants and Children Electronic Benefits Transfer System

On June 1, 2004, the Department of State Health Services (department) began piloting an off-line, smart card based electronic benefit transfer (EBT) system in the El Paso, Texas area. The EBT system replaces the paper voucher system supporting food delivery for participants in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The department plans to expand EBT system operations beyond El Paso as early as October, 2005; statewide rollout is expected to be complete in November, 2006. WIC participants redeem food benefits at any one of more than 2700 WIC-authorized retail sites statewide.

Retail electronic cash register (ECR) systems capable of initiating WIC EBT transactions are divided into two types: Integrated and Stand Beside (Stand Alone). Integrated WIC EBT systems are ECR systems that have been modified to accept WIC smart cards, initiate off-line WIC EBT transactions and decrement authorized amounts from the food prescription stored on the card, and transmit claim files to the WIC host processor for settlement. Integrated WIC EBT systems accept multiple tender types, such as cash, credit, debit, food stamps, Temporary Assistance to Needy Families (TANF) and WIC. Stand Beside or Stand Alone WIC EBT systems are single-tender ECR systems designed to accept only WIC EBT cards in payment for the delivery of authorized WIC foods. A Stand Beside WIC EBT system operates alongside a store's existing ECR system, requiring the clerk to 'double-scan' items into and to maintain UPC and price data in both the store and WIC EBT ECR systems. A WIC EBT system is 'Stand Alone' if the grocer currently has no installed ECR. Texas WIC expects the majority of WIC-authorized supermarkets, medium and large grocery chains, independents and convenience stores will use integrated WIC EBT systems. Small volume WIC stores and those stores selling only WIC foods are expected to use either a stand beside or stand alone WIC EBT system.

In El Paso, grocers purchased their own hardware and operating system software from the vendor designated by Texas WIC. Texas WIC employed a Retail Support Contractor to provide help desk support and on-site services, including hardware warranty and maintenance. In Texas, the Stand Beside WIC EBT system piloted in El Paso consists of a custom host software application (kWICpos), Hypercom ICE 6000 terminals with an Application Programming Interface (API), and a back room controller. Currently, WIC provides Level II and Level III software support to grocers operating stand beside and stand alone WIC EBT systems. Texas WIC acquires and processes claims submitted by WIC-authorized stores for settlement.

ECR CERTIFICATION

Texas WIC would like to determine if a commercially available "low cost" small grocer solution will be available for WIC-authorized grocers in lieu of continuing to develop/maintain kWICpos software and provide hardware and software support in El Paso and eventually statewide. To be eligible for consideration, an ECR system must be certified as "WIC Ready" in Texas. Texas WIC has implemented a comprehensive ECR certification process confirmed to ensure system accuracy, reliability, integrity and performance.

Grocer ECR system and software manufacturers, technicians, and others are encouraged to provide product and service information and pricing to WIC for ECR systems that may be able to achieve WIC certification. Information on any ECR system(s) certified will be distributed to all WIC authorized grocers who have not yet committed to the implementation of an integrated system.

CONTACT INFORMATION

Interested parties should contact either John Brewer at (512) 458-7444 or Penny Tisdale at (512) 415-2227, Department of State Health Services, 1100 West 49th Street, Austin, Texas, not later than April 12, 2005.

TRD-200501338

Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 29, 2005

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Announcement of the Public Comment Period for the 2005 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2004 - Draft for Public Comment

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of a seventeen-day public comment period for the *State of Texas 2005 Consolidated Plan Annual Performance Report - Reporting on Program Year 2004 - Draft for Public Comment* (the "Plan") as required by the U.S. Department of Housing and Urban Development (HUD). The *Plan* is required as part of the overall requirements governing the State's consolidated planning process. The *Plan* is submitted in compliance with 24 CFR 91.520 Consolidated Plan Submissions for Community Planning and Development Programs. The seventeen-day public comment period begins April 8, 2005 and continues until 5:00 p.m., April 25, 2005.

The *Plan* gives the Department an opportunity to evaluate its accomplishments during the past program year for the HOME Investment Partnerships program and the Emergency Shelter Grant (ESG) program. It also gives the Office of Rural Community Affairs and the Department of Health an opportunity to evaluate their accomplishments during the past program year for the Community Development Block Grant (CDBG) program and the Housing Opportunities for Persons with AIDS (HOPWA) program, respectively. The following information is provided for each of the four programs covered in the *Plan*: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting each of the goals and objectives set forth in the *2001-2004 State of Texas Consolidated Plan.*

Beginning April 8, 2005, the *Plan* will be available on the Department's website at www.tdhca.state.tx.us. A hard copy can be requested by contacting the Division of Policy and Public Affairs at: P.O. Box 13941, Austin, TX 78711-3941, or (512) 475-3976.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Division of Policy and Public Affairs, P.O. Box 13941, Austin, TX 78711-3941. For more information or to order copies of the *Plan* please contact the Division of Policy and Public Affairs at (512) 475-3976 or email at clandry@tdhca.state.tx.us.

TRD-200501346
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 30, 2005

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of CITIZENS INSURANCE COMPANY OF AMERICA to CICA LIFE INSURANCE COMPANY OF AMERICA, a foreign Life, Accident and/or Health company. The home office is in Denver, Colorado.

Application for admission to the State of Texas by UNITED AUTOMOBILE INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in North Miami Beach, Florida.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501349
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 30, 2005

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of HAMMERMAN & GAINER, INC., a domestic third party administrator. The home office is AUSTIN, TEXAS.

Application for incorporation in Texas of CAPROCK CLAIMS MANAGEMENT, LLC, a domestic third party administrator. The home office is DALLAS, TEXAS.

Application for admission to Texas of CORVEL HEALTHCARE CORPORATION, a foreign third party administrator. The home office is IRVINE, CALIFORNIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200501350
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 30, 2005

♦ ♦ ♦

Legislative Budget Board

Notice of Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP # HB7.2005.SPR.0009) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of Hearne Independent School District (HISD). The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about May 31, 2005, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on March 23, 2005, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas

Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http:/www.lbb.state.tx.us after 10:00 a.m. CZT, on March 23, 2005.

Questions: All questions regarding the RFP must be sent via facsimile to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on April 18, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than April 19, 2005, or as soon thereafter as practical.

Mandatory Letters of Intent: All potential respondents must submit non-binding Mandatory Letters of Intent to Propose, which must be received in the issuing office no later than 2:00 p.m. CZT, on April 18, 2005. Only the proposals of those respondents who submit a timely Letter of Intent will be considered.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on May 9, 2005. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 23, 2005, after 10:00 a.m. CZT;

Questions Due - April 18, 2005, 2:00 p.m. CZT;

Letters of Intent Due - April 18, 2005, 2:00 p.m. CZT;

Official Responses to Questions Posted - April 19, 2005, or as soon thereafter as practical;

Proposals Due - May 9, 2005, 2:00 p.m. CZT;

Contract Execution - May 31, 2005, or as soon thereafter as practical;

Commencement of Project Activities - May 31, 2005, or as soon thereafter as practical.

TRD-200501270
Bill Parr
Assistant Director
Legislative Budget Board
Filed: March 23, 2005

♦ ♦ ♦

Notice of Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP # HB7.2005.SPR.0010) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of San Elizario Independent School District (SEISD). The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about May 31, 2005, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on March 23, 2005, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http:/www.lbb.state.tx.us after 10:00 a.m. CZT, on March 23, 2005.

Questions: All questions regarding the RFP must be sent via facsimile to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on April 18, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than April 19, 2005, or as soon thereafter as practical.

Mandatory Letters of Intent: All potential respondents must submit non-binding Mandatory Letters of Intent to Propose, which must be received in the issuing office no later than 2:00 p.m. CZT, on April 18, 2005. Only the proposals of those respondents who submit a timely Letter of Intent will be considered.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on May 9, 2005. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 23, 2005, after 10:00 a.m. CZT;

Questions Due - April 18, 2005, 2:00 p.m. CZT;

Letters of Intent Due - April 18, 2005, 2:00 p.m. CZT;

Official Responses to Questions Posted - April 19, 2005, or as soon thereafter as practical;

Proposals Due - May 9, 2005, 2:00 p.m. CZT;

Contract Execution - May 31, 2005, or as soon thereafter as practical;

Commencement of Project Activities - May 31, 2005, or as soon thereafter as practical.

TRD-200501271
Bill Parr
Assistant Director
Legislative Budget Board
Filed: March 23, 2005

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 538 "Texas Road Trip"

1.0 Name and Style of Game.

A. The name of Instant Game No. 538 is "TEXAS ROAD TRIP". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 538 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 538.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $5.00, $10.00, $15.00, $30.00, $60.00, $100, $500, $3,000, $50,000, STAR SYMBOL, HORSESHOE SYMBOL, LASSO SYMBOL, HAT SYMBOL, CACTUS SYMBOL, OIL WELL SYMBOL, PINATA SYMBOL, GUITAR SYMBOL and STREAMERS SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 538 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTEEN
$30.00	THIRTY
$60.00	SIXTY
$100	ONE HUN
$500	FIV HUN
$3,000	THR THOU
$50,000	50 THOU
STAR SYMBOL	STAR
HORSESHOE SYMBOL	HRSHOE
LASSO SYMBOL	LASSO
HAT SYMBOL	HAT
CACTUS SYMBOL	CACTUS
OIL WELL SYMBOL	OIL
PINATA SYMBOL	PINATA
GUITAR SYMBOL	GUITAR
STREAMERS SYMBOL	STRMER

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 538 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, or $15.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $500.

I. High-Tier Prize- A prize of $3,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (538), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 538-0000001-001.

L. Pack - A pack of "TEXAS ROAD TRIP" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS ROAD TRIP" Instant Game No. 538 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS ROAD TRIP" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. Match any one or more of YOUR REGION NUMBERS to either of the WINNING NUBMERS, win the corresponding prize shown. BONUS Reveal 2 like symbols, win $10 instantly. Reveal 3 like symbols, win $100 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 25 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Key Number Match Play Area: Players can win up to nine (9) times in this play area.

B. Key Number Match Play Area: No duplicate non-winning YOUR REGION NUMBERS on a ticket.

C. Key Number Match Play Area: Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. Key Number Match Play Area: No duplicate Winning Numbers will appear on a ticket.

E. Key Number Match Play Area: Your Region Number will never equal the corresponding Prize symbol.

F. Bonus Play Area: Players can win once in this play area.

G. Bonus Play Area: On non-winning tickets, all 3 play symbols will be different from each other.

H. Bonus Play Area: On tickets winning $10 in this play area, 2 of the 3 play symbols will be identical.

I. Bonus Play Area: On tickets winning $100 in this play area, all 3 play symbols will be identical.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS ROAD TRIP" Instant Game prize of $5.00, $10.00, $15.00, $30.00, $60.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS ROAD TRIP" Instant Game prize of $3,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS ROAD TRIP" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS ROAD TRIP" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS ROAD TRIP" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,960,000 tickets in the Instant Game No. 538. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 538 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	475,200	8.33
$10	475,200	8.33
$15	105,600	37.50
$30	43,560	90.91
$60	34,386	115.16
$100	9,900	400.00
$500	396	10,000.00
$3,000	14	282,857.14
$50,000	3	1,320,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 538 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 538, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501325

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 28, 2005

♦ ♦ ♦

Instant Game Number 547 "Cool 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 547 is "COOL 7'S". The play style in Game 1 is "key number match with doubler". The play style in Game 2 is "three in a line". The play style in Game 3 is "match up with doubler". The play style in Game 4 is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 547 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 547.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, $1.00, $2.00, $5.00, $7.00, $10.00, $11.00, $27.00, $77.00, $100, $1,000, $7,000, $70,000, 7 SYMBOL, X SYMBOL, [ ] SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 547 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
7	
X	
[ ]	
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$7.00	SEVEN$
$10.00	TEN$
$11.00	ELEVEN
$27.00	TWY SVN
$77.00	SVTY SVN
$100	ONE HUND
$1,000	ONE THOU
$7,000	SVN THOU
$70,000	70 THOU
7 SYMBOL	DBL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game.

Figure 2: GAME NO. 547 - 1.2E

CODE	PRIZE
FIV	$5.00
SVN	$7.00
ELV	$11.00
SVT	$17.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $7.00, $11.00, or $17.00.

H. Mid-Tier Prize - A prize of $27.00, $47.00, $77.00, $177, or $577.

I. High-Tier Prize- A prize of $7,000 or $70,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (591), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 547-0000001-001.

L. Pack - A pack of "COOL 7'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one(1). One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "COOL 7'S" Instant Game No. 547 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "COOL 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. In Game 1, if the player matches any of the Your Numbers to the Lucky Number, the player will win the prize shown for that number. If the player reveals a "7" symbol, the player will win double that prize automatically. In Game 2, if the player reveals three Xs or [ ]s in any one row, column or diagonal the player will win the prize shown. If the player reveals three "7" symbols in any one row, column or diagonal the player will win double that prize automatically. In Game 3, if the player reveals 3 like amounts the player will win that amount. If the player reveals 2 like amounts and a "7" symbol, the player will win double that amount automatically. In Game 4, if the player matches any of the Your Numbers to either Winning Number, the player will win the prize shown for that number. If the player reveals a "7" symbol the player will win double that prize automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion

of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Although not all prizes can be won in each game, all prize symbols may be used in non-winning locations.

C. Game 1: No duplicate non-winning prize symbols.

D. Game 1: No duplicate non-winning Your Number play symbols.

E. Game 1: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

F. Game 1: The "7" doubler symbol will only appear on intended winners per the prize structure.

G. Game 2: Every ticket will contain at least 4 "X' or "O" symbols and 1 "7" symbol.

H. Game 2: This game may only win once.

I. Game 3: No four or more of a kind.

J. Game 3: No three or more pairs.

K. Game 3: The "7" doubler symbol will only appear on intended winners as dictated by the prize structure.

L. Game 3: The "$7.00" prize symbol will only appear on tickets where it contributes to the win.

M. Game 4: No duplicate non-winning prize symbols.

N. Game 4: No duplicate non-winning Your Number play symbols.

O. Game 4: No duplicate Winning Number play symbols.

P. Game 4: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

Q. Game 4: The "7" doubler symbol will only appear on intended winners per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "COOL 7'S" Instant Game prize of $5.00, $7.00, $11.00, $17.00, $27.00, $47.00, $77.00, $177, or $577, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $27.00, $47.00, $77.00, $177 or $577 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COOL 7'S" Instant Game prize of $7,000 or $70,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COOL 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "COOL 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "COOL 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 547. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 547 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	672,000	7.50
$7.00	134,400	37.50
$11.00	268,800	18.75
$17.00	134,400	37.50
$27.00	67,200	75.00
$47.00	49,728	101.35
$77.00	13,650	369.23
$177	8,400	600.00
$577	840	6,000.00
$7,000	10	504,000.00
$70,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 547 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 547, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501326
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 28, 2005

♦ ♦ ♦

Instant Game Number 561 "Texas Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 561 is "TEXAS CASH". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 561 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 561.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, FLAG SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 561 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
FLAG SYMBOL	WINALL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$

$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 561 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize- A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (561), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 561-0000001-001.

L. Pack - A pack of "TEXAS CASH" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS CASH" Instant Game No. 561 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBER play symbols to any of the WINNING NUMBERS play symbols the player wins prize indicated for that number. If the player reveals a FLAG SYMBOL the player wins all prizes shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers on a ticket.

C. No duplicate Winning Numbers on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

G. No Your Number will match any Winning Number play symbol when the win all symbol appears on a ticket.

H. The win all symbol will only appear on intended winners as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS CASH" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS CASH" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 561. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 561 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	739,200	6.82
$10	336,000	15.00
$15	134,400	37.50
$20	117,600	42.86
$50	67,200	75.00
$100	12,600	400.00
$500	924	5,454.55
$1,000	168	30,000.00
$5,000	21	240,000.00
$50,000	7	720,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.58. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 561 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 561, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501335
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 29, 2005

♦ ♦ ♦

Instant Game Number 591 "Triple 3's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 591 is "TRIPLE 3'S. The play style is "key symbol match with multiplier and bonus feature".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 591 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 591.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $3.00, $5.00, $9.00, $10.00, $15.00, $30.00, $50.00, $60.00, $100, $300, $900, $30,000, 1 SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, 7 SYMBOL, 8 SYMBOL, 9 SYMBOL, 3 TIMES SYMBOL and NO BONUS SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 591 - 1.2D

PLAY SYMBOL	CAPTION
$3.00	THREE$
$5.00	FIVE$
$9.00	NINE$
$10.00	TEN$
$15.00	FIFTEEN
$30.00	THIRTY
$50.00	FIFTY
$60.00	SIXTY
$100	ONE HUN
$300	THR HUN
$900	NIN HUN
$30,000	30 THOU
1 SYMBOL	
2 SYMBOL	
3 SYMBOL	
4 SYMBOL	
5 SYMBOL	
6 SYMBOL	
7 SYMBOL	
8 SYMBOL	
9 SYMBOL	
3 TIMES	TRIPLE
NO BONUS	AMOUNT

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 591 - 1.2E

CODE	PRIZE
THR	$3.00
FIV	$5.00
NIN	$9.00
TEN	$10.00
FTN	$15.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $9.00, $5.00, $10.00 or $15.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $60.00, $100 or $300.

I. High-Tier Prize- A prize of $900 or $30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (591), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 591-0000001-001.

L. Pack - A pack of "TRIPLE 3'S Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Tickets 001 will be shown o the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLE 3'S Instant Game No. 591 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TRIPLE 3'S Instant Game is determined once the latex on the ticket is scratched off to expose 31 thirty-one) Play Symbols. If a player reveals three (3), "3" play symbols in any one row, column or diagonal, the player will win the prize in the prize box for that play area. If a player reveals a 3 TIMES play symbol in the Bonus Box play area the player wins triple the prize amount indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 31 (thirty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 31 (thirty-one) Play Symbols under the latex overprint on the front portion

of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 31 (thirty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 31 (thirty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket will win as indicated by the prize structure.

B. Players can win up to three (3) times on this ticket.

C. No game will contain three (3) or more of a kind other than the "3" symbol.

D. Winning tickets can only win by getting three (3) "3" symbols in the same row, column, or diagonal.

E. There will never be four (4) "3's" in all four (4) corners in one Tic Tac Toe play area.

F. Tickets that win with the "3TIMES" play symbol in the Bonus Area, will win as per the prize structure.

G. The "3TIMES" play symbol will only appear in the Bonus Area.

H. Each Tic Tac Toe play area can only win once.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE 3'S Instant Game prize of $3.00, $5.00, $9.00, $10.00, $15.00, $30.00, $50.00, $60.00, $100 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $60.00, $100 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE 3'S Instant Game prize of $900 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE 3'S Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TRIPLE 3'S Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TRIPLE 3'S Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 591. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 591 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	480,000	12.50
$5	240,000	25.00
$9	432,000	13.89
$10	48,000	125.00
$15	48,000	125.00
$30	54,250	110.60
$50	18,000	333.33
$60	15,000	400.00
$100	4,000	1,500.00
$300	200	30,000.00
$900	60	100,000.00
$30,000	7	857,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.48. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 591 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 591, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501327
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 28, 2005

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

This is a notice of an opportunity for public comment and a public hearing on Delta County's application to obtain a Texas Parks and Wildlife Department (TPWD) permit to dredge state-owned sand and gravel from the North Sulphur River bed in Delta County at the following five locations:

--starting at a point 2 miles upstream from the FM 38 crossing and extending downstream for 1.36 miles;

--approximately 3 miles downstream from the Highway 2675 crossing and approximately 3 miles upstream from the Highway 24 crossing;

--approximately 8 miles downstream from the State Highway 24 crossing;

--approximately 12 miles downstream from the State Highway 24 crossing; and

--approximately 14 miles downstream from the State Highway 24 crossing.

The hearing will be held on Tuesday, May 3, 2005, at 1:30 pm at TPWD Headquarters, 4200 Smith School Rd., Austin, TX 78744. The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing.

Submit written comments, questions, or requests to review the application to: Lisa Belli, TPWD, by mail; fax (512) 389-4482; e-mail lisa.belli@tpwd.state.tx.us; phone (512) 389-4770.

TRD-200501357
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: March 30, 2005

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on March 25, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Incorporated to Amend Certificate of Convenience and Necessity for a Service Area Boundary between its Hancock Exchange and Verizon's Blanco Exchange. Docket Number 30918.

The Application: The minor boundary amendment is being filed to transfer a small portion of Verizon's serving area to Guadalupe Valley Telephone Cooperative, Incorporated (GVTC) so that GVTC can provide local exchange telephone service to a proposed new subdivision (Summit Estates). A portion of the proposed property currently lies within Verizon's service area. Verizon does not currently have facilities in the area and has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30918.

TRD-200501344
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 29, 2005

♦ ♦ ♦

Notice of Application for Relinquishment of a Certificate of Operating Authority

On March 23, 2005, Nortex Telcom, L.L.C. filed an application with the Public Utility Commission of Texas (Commission) to relinquish its certificate of operating authority (COA) granted in COA Certificate Number 50015. Applicant intends to relinquish its certificate.

The Application: Application of Nortex Telcom, L.L.C. to Relinquish its Certificate of Operating Authority, Docket Number 30913.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 13, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30913.

TRD-200501324
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2005

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries in Brown County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 22, 2005 for an amendment to certificated service area boundaries within Brown County, Texas.

Docket Style and Number: Application of Coleman County Electric Cooperative, Inc., for a Certificate of Convenience and Necessity for Service Area Boundaries within Brown County. Docket Number 30892.

The Application: Coleman County Electric Cooperative, Inc. (CCEC) requests a service area boundary amendment to supply power to an oil well listed as the Guthrie #4 in an area that is certified to Cap Rock Corporation (Cap Rock). CCEC has facilities 2020 feet from the site. Cap Rock's nearest facilities are located a mile away. Cap Rock is in full agreement with the territory amendment. The amount of money expected to be expended on new facilities if the application is granted is approximately $7,272.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 18, 2005 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30892.

TRD-200501314

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2005

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries in Hidalgo County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 22, 2005 for an amendment to certificated service area boundaries within Hidalgo County, Texas.

Docket Style and Number: Application of Magic Valley Electric Cooperative, Inc., and AEP Texas Central Company for a Certificate of Convenience and Necessity for Service Area Boundaries within Hidalgo County. Docket Number 30893.

The Application: Magic Valley Electric Cooperative, Inc. (MVEC) received a request to provide service to all lots within the Los Venados Subdivision which lies partially within MVEC's service area. The remainder of the subdivision is in AEP Texas Central Company's (TCC) service area. MVEC has existing facilities in place. TCC's nearest facilities are located 7 miles away. TCC is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 18, 2005 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30893.

TRD-200501315
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2005

♦ ♦ ♦

Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 23, 2005, to relinquish designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Nortex Telcom, L.L.C. to Relinquish its Designation as an Eligible Telecommunications Carrier (ETC), Pursuant to P.U.C. Substantive Rule §26.418(i)(1). Docket Number 30912.

The Application: Nortex was granted ETC designation in the Denton exchange. Nortex now seeks to relinquish its ETC designation in the Denton Exchange as it sold its assets to Grande Communications.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 28, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30912.

TRD-200501323
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2005

♦ ♦ ♦

Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on March 21, 2005, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Consolidated Communications of Fort Bend Company's request for one 1,000-block of numbers in the Katy, Texas exchange.

Docket Title and Number: Petition of Consolidated Communications of Fort Bend Company for Waiver of Neustar Denial of Number Block Request in the Katy, Texas Exchange. Docket Number 30886.

The Application: Consolidated Communications of Fort Bend Company submitted an application to the Pooling Administrator (PA) for numbering resources in the Katy, Texas exchange. The PA denied the request based on the grounds that Consolidated Communications of Fort Bend Company had not met the utilization threshold necessary in order to obtain growth number resources.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 14, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30886.

TRD-200501313
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2005

♦ ♦ ♦

Texas A&M University, Board of Regents

Public Notice Issued March 24, 2005 (Announcement of Finalist for the Position of Director of Texas Cooperative Extension)

Pursuant to Section 552.123, Texas Government Code, the following candidate is the finalist for the position of Director of Texas Cooperative Extension. Upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of The Texas A&M University System.

Edward G. Smith

TRD-200501316
Vickie Burt Spillers
Executive Secretary to the Board of Regents
Texas A&M University, Board of Regents
Filed: March 28, 2005

♦ ♦ ♦

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

Primary

*Public Health Care Facility

Alternate

*Public Health Care Facility

*Dentist

*Podiatrist

*Employer

*Employee

*General Public Representative 1

*General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us*. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501334

Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: March 29, 2005

♦ ♦ ♦

Work-Force 1 (Coastal Bend Workforce Development Board)

Request for Proposal for the Development and Delivery of Quality Child Care Services

Using the Request for Proposal (RFP) method of procurement, Work-Force 1, formerly known as Coastal Bend Workforce Development Board is soliciting proposals for the Development and Delivery of Quality Child Care Services.

The role Quality Child Care Service Provider is to develop, support, and maintain relationships with the Early Care and Education programs that result in quality care, recruit and negotiate provider agreements with child care providers, increase the quality of child care providers through certification, technical assistance and training opportunities, and serve as a resource to parents, providers and community.

The Selected Provider is to coordinate these services with the Workforce Center Operators throughout the Coastal Bend Workforce Development Area.

The selected individual or firm will be placed on a fee for service contract. Work-Force 1 reserves the option to extend the contract for an additional two years. These extensions will be granted in one year increments. Contract extensions are subject to satisfactory performance of the contractor and successful negotiation of the terms and conditions.

Interested parties may obtain a copy of the RFP by contacting Blair McDavid at (361) 889-5300, extension 106 or blair.mcdavid@work-force1.com on or after April 4, 2005. The deadline for receipt of proposals is Thursday, June 2, 2005, 4:00 p.m. Proposals submitted without the proper forms or after the deadline will not be considered. Mailed or hand delivered responses are acceptable. Faxed copies will not be accepted.

Work-Force 1 is an Equal Opportunity Employer/Program. Historically Underutilized Businesses (HUB's) are encouraged to apply. Auxiliary aid and services are available upon request to individuals with disabilities by dialing 711.

TRD-200501332
Deborah Arnold
Planning Director
Work-Force 1 (Coastal Bend Workforce Development Board)
Filed: March 29, 2005

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

☐ **Change of Address**
(Please fill out information below)

☐ **Paper Subscription**
☐ One Year $240 ☐ First Class Mail $300

☐ **Back Issue ($10 per copy)**
_____ Quantity

Volume _____, Issue #_____.
(Prepayment required for back issues)

NAME_____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____
(Number for change of address only)

Payment Enclosed via ☐ Check ☐ Money Order
Mastercard/VISA Number _____
Expiration Date _____/_____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

Visit our home on the internet at http://www.sos.state.tx.us.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additional entry offices

_____
_____